



FEDERAL ACQUISITION CIRCULAR

March 10, 1994

Number 90-20

Federal Acquisition Circular (FAC) 90-20 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-20 is effective May 9, 1994, except for items I, II, III, IV, VI, VII, X, XIII, XIV, XIX, and XX, which are effective March 10, 1994.

FAC 90-20 LIST of SUBJECTS

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FAC 90-20 SUMMARY of ITEMS

Federal Acquisition Circular (FAC) 90-20 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Section 6050M of the Tax Reform Act of 1986 (FAR Case 91-52)

The interim rule published at 57 FR 44259 on September 24, 1992 (FAC 90-13, Item I), is converted to a final rule with one change. FAR Subpart 4.9, Information Reporting to the Internal Revenue Service (IRS), and the clause at 52.204-3, Taxpayer Identification, have been revised to ensure the collection and reporting of the Taxpayer Identification Number (TIN) of certain contract modifications. The approved change is to the last sentence of 52.204-3(b). A 31 percent figure has replaced the previous 20 percent figure as a result of an amendment to 26 U.S.C. 3406(a)(1).

Replacement pages: 52-15 and 52-16.

Item II—Made in America Labels (FAR Case 93-301) and Unfair Trade Practices (FAR Case 93-306)

These interim rules add language to FAR 9.403, 9.406-2(a) and (b), and 9.407-2(a) concerning suspension or debarment of contractors who engage in unfair trade practices and/or intentionally affixed a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States.

Replacement pages: 9-11 thru 9-16.1.

Item III—Preference for Commercial Products (FAR Case 91-48)

The interim rule published as Item V of FAC 90-9 is converted to a final rule. The interim rule amended section 10.001 and revised sections 10.002(d) and 10.006(a) to provide an order of preference for the various types of product descriptions used in contracting. The final rule differs from the interim rule in that (1) the Department of Defense (DOD) requirement for mandatory use of product descriptions listed in the DOD Index of Specifications and Standards, which was inadvertently omitted from the interim rule, is reinstated at 10.006(a); (2) a new exception to the requirement for mandatory use of indexed product descriptions is added at 10.006(a)(6); and (3) editorial changes are made for clarification.

Replacement pages: TOC, Part 10; and 10-1 thru 10-4.

**Item IV—Increase in Cost or Pricing Data, Threshold
(FAR Case 91-53)**

The interim rule published at 56 FR 67413, December 30, 1991 (FAC 90-10, Item I), is confirmed as final without change. This rule amended the FAR to reflect an increase in the statutory threshold for submission of cost or pricing data from \$100,000 to \$500,000 for DOD, NASA, and the Coast Guard.

Replacement pages: None.

Item V-Reimbursement, Interest Charges, and Penalties for Overpayment; Clarification (FAR Case 91-99)

This item clarifies Item 11 of FAC 90-3 (55 FR 52782, December 21, 1990) regarding the application, to contract modifications, of the statutory and regulatory guidance on reimbursement, interest charges, and penalties for overpayment (FAR case 89-37). The word "contracts" in Item 11 includes contract modifications.

For DOD, NASA, and the Coast Guard, the statutory and regulatory guidance applies to: (1) contracts awarded on or after November 8, 1985; and (2) modifications issued on or after November 8, 1985, regardless of the date of contract award. For all other agencies, the regulatory guidance applies to contracts awarded and modifications issued after January 22, 1991.

If a contract is modified and that modification requires the submission of certified cost or pricing data, the contract must be updated to incorporate the 1991 version of the clause at FAR 52.214-27, 52.215-22, or 52.215-23 for that modification. This updating is to ensure that the contract includes the requirement for interest on defective pricing reductions for modifications.

Replacement pages: None.

**Item VI-Clarify Increased Cost or Pricing Data Threshold
(FAR Case 91-96)**

The interim rule published as Item X in FAC 90-16 is converted to a final rule without change. The interim rule revised FAR 15.804-2 to clarify application of the \$500,000 threshold for submission of certified cost or pricing data for contracts awarded by the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard. This rule implements Section 804 of the FY 92 Defense Authorization Act, which amended 10 U.S.C. 2306a(a)(1) to specify that the \$500,000 threshold for DOD, Coast Guard, and NASA, also applies to subcontracts entered into after December 5, 1991, under prime contracts entered into on or before December 5, 1990, if the prime contract is modified to incorporate the \$500,000 threshold. It also specifies that the \$500,000 threshold applies to changes or modifications made after

December 5, 1991, when the prime contract is modified to incorporate the \$500,000 threshold.

Replacement pages: None.

Item VII-Nonmanufacturer Rule (FAR Case 91-50)

This converts the interim rule on the Nonmanufacturer Rule, published in the Federal Register at 57 FR 60571 on December 21, 1992, as Item XI of FAC 90-16, to a final rule with minor revisions. The interim rule implemented Section 210 of Public Law 101-574. It revised FAR 19.001 and 19.102 to add a definition for the term "nonmanufacturer rule," to address Small Business Administration waiver of the nonmanufacturer rule for specific items, and to remove the partial listing of classes for which a waiver has been granted.

Replacement pages: 19-5.

Item VIII—Small Business Competitiveness Demonstration Program (FAR Case 91-97)

FAR 19.1001(b) and 19.1006(b)(1) are amended to extend the Small Business Competitiveness Demonstration Program through September 30, 1996. FAR 19.1006(b)(1) is also amended to clarify procedures when an emerging small business (ESB) reserve amount is greater than \$25,000. Section 19.1006(c) (1) is amended to delete the dollar threshold for the ESB reserve amount and substitute "established by the Office of Federal Procurement Policy." Subparagraphs (c) (1) (i) and (ii) have been added to clarify how to proceed when there is not a reasonable expectation of offers from two or more responsible ESB's or when it is necessary to cancel an ESB set-aside.

Replacement pages: 19-45 and 19-46.

Item IX-Removal of Steel Conduit from the FAR Buy American Act Exemption List (FAR Case 92-619)

Paragraph (d)(1) of 25.108, Excepted Articles, Materials, and Supplies, is being amended to remove steel conduit (5" and 6") from the FAR Buy American Act exemption list. Market research has uncovered two domestic sources for these products.

Replacement pages: 25-3 and 25-4.

Item X-Buy American Act-Construction Materials (FAR Case 91-75)

The interim rule published at 57 FR 20372, May 12, 1992, (FAC 90-11, Item II) is confirmed **as** final without change. The interim rule amended FAR 25.201 and 52.225-5 to modify the definition of "construction material" to require evaluation of an emergency life

safety system as a single construction material under the Buy American Act, regardless of when and how the individual parts or components are delivered to the construction site. This rule implements section 631 of Public Law 102-141, Treasury, Postal Service and General Government Appropriations Act.

Replacement pages: None.

Item XI-Examination of Records (FAR Case 92-47)

FAR 25.901(c) is revised to make the requirement for notification of Congress, when the clause at 52.215-1, Examination of Records by Comptroller General, is omitted from a contract with a foreign contractor, inapplicable to the Department of Defense.

Replacement pages: 25-13 and 25-14.

Item XII-Independent Research and Development and Bid and Proposal Costs (FAR Case 93-302)

FAR 31.205-18(c) (2) (iii) (A) is amended to insert a date certain with regard to waiving the limitation on the maximum allowable amount of independent research and development and bid and proposal costs for a major contractor in order to ensure that the amount determined to be allowable for such contractor is at least equal to what would have been allowed prior to the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102-190).

Replacement pages: 31-25 and 31-26.

Item XIII-Prompt Payment Overseas (FAR Case 92-46)

This interim rule revises FAR 32.901 and amends the clauses at FAR 52.232-25, 52.232-26, and 52.232-27 to remove the statements that no interest penalty will be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States and to remove the definition of "foreign vendor" from the clauses.

Replacement pages: 32-29 and 32-30; and 52-179 thru 52-186.

Item XIV-Federal Courts Administration Act (FAR Cases 92-301 and 91-62)

This interim rule amends FAR 33.201, 33.202, 33.204, 33.207, 33.208, 33.210, 33.211, 33.214, 42.302, and the clause at 52.233-1 concerning the certification of claims under the Contract Disputes Act (CDA). The rule implements section 907(a) of the Federal Courts Administration Act of 1992 (Pub. L. 102-572) which requires that the person certifying a CDA claim be duly authorized to bind the contractor; specifies the conditions under which a contracting officer does not have to issue a final decision; provides that

certifications are not jurisdictional; further revises the existing alternative dispute resolution (ADR) coverage; and provides for payment of interest from the date of initial receipt of the claim or enactment of Public Law 102-572, whichever is later. (Public Law 102-572 was enacted on October 29, 1992.)

Replacement pages: *TOC, Part 33; 33-5 thru 33-8; 42-3 and 42-4; and 52-189 and 52-190.*

**Item XV-Defense Traffic Management Regulation
(FAR Case 92-53)**

FAR Subpart 42.14, Traffic and Transportation Management, is amended to update the title of the Defense Traffic Management Regulation and to add references to Military Departments and Defense Logistics Agency regulations concerning traffic and transportation management.

Replacement pages: *42-19 thru 42-22; 47-1 thru 47-4; and 47-17 and 47-18.*

Item XVI-Records of Plant Equipment (FAR Case 91-73)

The FAR is being amended at 45.501, 45.505-1, 45.505-4, and 45.505-5 to add language on the use of summary records and expand the use of summary records to special tooling and special test equipment costing less than \$5,000.

Replacement pages: *45-11 thru 45-16.*

**Item XVII--Reports of Government Property
(FAR Case 91-58)**

FAR 45.505-14(a), Reports of Government Property, is revised to require contractors to report annually all classifications of Government property in their possession. The FAR revision expands the list of property classifications to be reported to include special tooling, special test equipment, material and agency peculiar property. It deletes the dollar amounts for plant equipment.

Replacement pages: *45-17 and 45-18.*

Item XVIII-Returnable Cylinders (FAR Case 91-10)

A clause, Returnable Cylinders, is added to the FAR at 52.247-66, and prescriptive language is added at 47.305-17. The clause describes the Government's responsibilities relating to the return and accountability of contractor-furnished returnable cylinders.

Replacement pages: *TOC, Part 47 (pp 1 & 2); 47-21 and 47-22; TOC, Part 52 (pp 7 & 8); 52-279 thru 52-280.1; and 52-339 thru 52-342.*

Item XIX-Small Business Innovation Research Rights in Data (FAR Case 93-305)

Paragraph (d) of the clause at FAR 52.227-20, Rights in Data—SBIR Program, is revised to increase the small business concern's data rights retention period from 2 to 4 years. This revision implements Section 15(f) of the revised SBIR Program Policy Directive, published by the SBA in the Federal Register on January 26, 1993 (58 FR 6144).

Replacement pages: 52-141 and 52-142.

Item XX-Corrections, Technical Amendments, and Reprints

The following items are technical corrections and amendments of errors, omissions or inconsistencies to previously published items in the FAR. For the convenience of the user, Standard Forms 254 and 255, and OF 333 are republished.

STRUCTURE OF THE FAR TO THE SUBPART LEVEL [Corrected]

1. The Structure of the FAR to the Subpart Level is corrected at subpart 22.5 by removing and reserving "Open Bidding on Federal Construction Contracts".

Replacement pages: Structure of the FAR to the Subpart Level, pp. 3 and 4.

PART 1-FEDERAL ACQUISITION REGULATIONS SYSTEM

1-404 [Nomenclature change]

2. Section 1.404(c) is amended by revising "Assistant Administrator for Procurement" to read "Associate Administrator for Procurement".

Replacement pages: 1-7 and 1-8.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.104-g [Corrected]

3. Section 3.104-9(c)(2) is amended in item 1 of the certificate entitled "Contracting Officer Certificate of Procurement Integrity" by adding "I" after "certificate,".

Replacement pages: 3-15 and 3-16.

PART 5—PUBLICIZING CONTRACT ACTIONS

5.207 [Nomenclature change]

4. Section 5.207(b) is amended in the last sentence of Item 4 of "Format Item and Explanation/Description of Entry" by removing the words "National Bureau of Standards" and inserting "National Institute of Standards and Technology (NIST)" in its place.

Replacement pages: 5-5 and 5-6.

PART 9—CONTRACTOR QUALIFICATIONS

Subpart 9.5 [Corrected]

5. In the table of contents for part 9, subpart 9.5 is corrected as follows—

(a) In the subpart heading by adding "AND CONSULTANT" after "ORGANIZATIONAL" to reflect an amendment made in Federal Acquisition Circular 90-1, Item 1, FAR case 90-18;

(b) In the section headings for 9.506 through 9.509 to reflect revisions made in Federal Acquisition Circular 90-1, Item 1, FAR case 90-18.

Replacement pages: TOC, Part 9 (pp. 1&2).

PART 15—CONTRACTING BY NEGOTIATION

15.804-6 [Corrected]

6. Section 15.804-6 is corrected in the second sentence of paragraph 1 of Table 15-2 by revising "7A" to read "8A".

Replacement pages: 15-23 and 15-24.

PART 16—TYPES OF CONTRACTS [Technical amendment]

7. Section 16.204 is amended by revising the third sentence and adding a fourth sentence to read as follows:

16.204 Fixed-price incentive contracts.

* * * See 16.403 for more complete descriptions, application, and limitations for these contracts. Prescribed clauses are found at 16.405.

Replacement pages: 16-3 and 16-4.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.102 [Technical amendment] (FAR Case 92-600)

8. Section 19.102 is amended in the table of Major Group 73, by revising SIC codes 7371 through 7379.

Replacement pages: 19-17 and 19-18.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205-38 [Corrected]

8. Section 31.205-38 is corrected in paragraph (c) (2) (iii) by revising "December 22" to read "December 15".

Replacement pages: 31-33 and 31-34.

PART 42—CONTRACT ADMINISTRATION

42.701 [Corrected]

9. Section 42.701 is corrected in the definition "business unit" by revising the parenthetical to read " (31.001) ".

Replacement pages: 42-7 and 42-8.

PART 47—TRANSPORTATION

47.305-6 [Corrected]

10. Section 47.305-6 is corrected in the introductory text of paragraph (e) by removing the word "protected" and inserting "exported" in its place.

Replacement pages: 47-17 and 47-18.

PART 48—VALUE ENGINEERING

48.104-1 [Corrected]

11. Section 48.104-1 is corrected in paragraph (a) (2) (i) by removing the word "new" and inserting "net" in its place.

Replacement pages: 48-3 and 48-4.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.101 [Corrected]

12. Section 52.101 is corrected in the example illustrated in paragraph (b) by removing the number "242" and inserting "243" in its place each time (3) it appears.

Replacement pages: 52-1 and 52-2.

13. Section 52.210-1 is amended by revising paragraph (a) of the provision to read as follows:

52.210-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

(a) A single copy of each specification cited in this solicitation is available without charge from the GSA Federal Supply Service Bureau Specifications Section (3FBP-W), 470 East L'Enfant Plaza, SW., Suite 8100, Washington, DC 20407 (Tel. 202-755-0325 or 755-0326), or from any of the General Services Administration Business Service Centers which are located in Boston, MA; New York, NY; Philadelphia, PA; Atlanta, GA; Kansas City, MO; and Fort Worth, TX. Additional copies may be purchased from the GSA Specifications Section in Washington, D.C.

Replacement pages: 52-23 and 52-24.

52.210-2 [Amended]

14. Section 52.210-2 is amended in the last paragraph of the provision by removing the entries "Telex Number", "Western Union Number", and "Telephone Number" and inserting "Facsimile No. 215-697-2978" in their place.

Replacement pages: 52-23 and 52-24.

52.228-8 [Corrected]

15. Section 52.228-8 is corrected in the introductory text by adding an "s" to "solicitation", and at the end of paragraph (a) (2) of the clause by correcting the parenthetical to read "(28 U.S.C. 2671-2680)".

Replacement pages: 52-147 and 52-148.

52.246-21 [Corrected]

16. Section 52.246-21 is corrected in paragraph (a) of the clause by revising "paragraph (j)" to read "paragraph (i)".

Replacement pages: 52-253 and 52-254.

PART 53-FORMS

17. Paragraph 53.203(b) is revised to read as follows:

53.203 Improper business practices and personal conflicts of interest.

* * * * *

(b) OF 333 (Rev. 10/92), Procurement Integrity Certification for Procurement Officials. OF 333 is prescribed for use, as specified in 3.104-12(a) (3). OF 333 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

Replacement pages: 53-1 and 53-2.

53.213 [Corrected]

18. Section 53.213 is corrected in the section heading by adding an "s" to the end of the word "purchase" the first time it is used.

Replacement pages: 53-3 and 53-4.

19. Section 53.214 is amended at the end of paragraphs (a) and (c) by adding a sentence to read as follows:

53.214 Sealed bidding.

(a) * * * Pending issuance of a new edition of the form, the reference in "block 1" should be amended to read "15 CFR 700".

* * * * *

(c) * * * Pending issuance of a new edition of the form, the reference in "block 1" should be amended to read "15 CFR 700".

Replacement pages: 53-3 thru 53-4.

NOTE TO USERS: Please make pen-and-ink changes to corresponding information on SF's 26 and 33.

20. Section 53.222 is amended at the end of paragraph (e) by adding a sentence to read as follows:

53.222 Application of labor laws to Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH-347).

* * * * *

(e) * * * Pending issuance of a new edition of the form, the "prescribed by" reference at the bottom right of the form is revised to read "53.222(e)".

* * * * *

Replacement pages: 53-5 and 53-6.

NOTE TO USERS: Please make pen-and-ink change to corresponding information on SF 1413.

Subpart 53.3—Illustration of Forms

21. At 53.301-254 and 53.301-255, Standard Form (SF) 254, Architect-Engineer and Related Services Questionnaire, and SF 255, Architect-Engineer and Related Services Questionnaire for Specific Project, which were revised and illustrated as Item XXIII in FAC 90-16 (57 FR 60570, December 21, 1992), are being republished in this FAC 90-20 to reflect the removal of the Office of Management and Budget's (OMB) date of expiration for clearance approvals and to reflect other minor typographical changes.

Replacement pages: 53-51 thru 53-70.

22. At 53.302-333, Optional Form 333, Procurement Integrity Certification for Procurement Officials, is authorized for local reproduction indefinitely and the revised version is published here for the convenience of the user.

Replacement pages: 53-201 thru 53-202.2.

CORRECTIONS AND SUBSCRIPTION PROBLEMS FORM [Republished]

23. The **Corrections and Subscription Problems** pages located at the end of the FAR behind the Index are updated.

Replacement pages: Two copies of the **Corrections and Subscription Problems** forms.

NOTICES

Annual Notice of Rates of Inflation

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to publish, as an information item, the rates of inflation which are used in conjunction with other factors to determine the allowability of independent research and development and bid and proposal (IR&D/B&P) costs for major contractors under FAR 31.205-18(c) (2)(i)(C)(2). These rates were issued by the Acting Comptroller of the Department of Defense in March 1993. FAR 31.205-18(c) (2)(i)(C)(2) states the rates of inflation will be published in the Federal Register on an annual basis.

Federal Acquisition Circular 90-13, FAR case 91-37, Item VII, published in the Federal Register at 57 FR 44264, September 24, 1992, provided rates of inflation which were to be used to determine the allowability of IR&D/B&P costs for major contractors during the 3-year transition period FY 1993 through 1995. FAR 31.205-18(c) (2)(i)(C)(2) states the rates of inflation will be published in the Federal Register on an annual basis. The following rates of inflation are effective immediately, supersede those published in the Federal Register at 57 FR 44264, September 24, 1992, and shall remain in effect until superseded by the next publication:

<u>Fiscal Year</u>	<u>Annual Percentaae Rate</u>
1993	2.4
1994	2.3
1995	2.3
1996	2.2

Availability of the 1993 Consolidated Reprint of the FAR

The 1993 Consolidated Reprint of the FAR will be available after March 30, 1994. Circulars amending the 1990 edition of the FAR have been consolidated up through December 31, 1993; therefore, reprint users should immediately begin filing with FAC 90-19, which was issued January 5, 1994, and will be distributed to subscribers in March.

For additional information, contact the FAR Secretariat at 202 501-4755. For subscription and distribution information, contact the Superintendent of Documents at 202 512-2305.

FAC 90-20 FILING INSTRUCTIONS

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OF 333

(local reproduction
edition)

Corrections and

Subscription Problems

(2 copies)

NOTE TO USERS: Please make pen-and-ink changes to SF's 26, 33, and 1413 (see pages 10 and 11, Instructions 19 and 20, above).

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1.502

1.403 Individual deviations.

Individual deviations affect only one contracting action, and, unless 1.405(e) is applicable, may be authorized by agency heads or their designees. The justification and agency approval shall be documented in the contract file and a copy of the approved deviation shall be furnished to the FAR Secretariat through a central agency control point.

1.404 Class deviations.

Class deviations affect more than one contracting action. When it is known that a class deviation will be required on a permanent basis, an agency should propose an appropriate FAR revision to cover the matter. A copy of each approved class deviation shall be furnished to the FAR Secretariat.

(a) For civilian agencies except NASA, class deviations may be authorized by agency heads or their designees, unless 1.405(e) is applicable. Delegation of this authority shall not be made below the head of a contracting activity. Authorization of class deviations by agency officials is subject to the following limitations:

(1) An agency official who may authorize a class deviation, before doing so, shall consult with the chairperson of the Civilian Agency Acquisition Council (CAA Council), unless that agency official determines that urgency precludes such consultation.

(2) Recommended revisions to the FAR shall be transmitted to the FAR Secretariat by agency heads or their designees for authorizing class deviations.

(b) For DOD, class deviations shall be controlled, processed, and approved in accordance with the Defense FAR Supplement

(c) For NASA, class deviations shall be controlled and approved by the Associate Administrator for Procurement. Deviations shall be processed in accordance with agency regulations.

1.405 Deviations pertaining to treaties and executive agreements.

(a) "Executive agreements," as used in this section, means Government-to-Government agreements, including agreements with international organizations, to which the United States is a party.

(b) Any deviation from the FAR required to comply with a treaty to which the United States is a party is authorized, unless the deviation would be inconsistent with FAR coverage based on a law enacted after the execution of the treaty.

(c) Any deviation from the FAR required to comply with an executive agreement is authorized unless the deviation would be inconsistent with FAR coverage based on law.

(d) A copy of the text deviation authorized under paragraphs (b) or (c) of this section shall be transmitted to the FAR Secretariat through a central agency control point

(e) If a deviation required to comply with a treaty or an executive agreement is not authorized by paragraphs (b) or (c) of this section, then the request for deviation shall be processed through the FAR Secretariat to the appropriate council.

SUBPART 1.5—AGENCY AND PUBLIC PARTICIPATION

1.501 Solicitation of agency and public views.

1.501-1 Definition.

"Significant revisions," as used in this subpart, means revisions that alter the substantive meaning of any coverage in the FAR System having a significant cost or administrative impact on contractors or offerors, or significant effect beyond the internal operating procedures of the issuing agency. This expression, for example, does not include editorial, stylistic, or other revisions that have no impact on the basic meaning of the coverage being revised.

1.501-2 Opportunity for public comments.

(a) Views of agencies and nongovernmental parties or organizations will be considered in formulating acquisition policies and procedures.

(b) The opportunity to submit written comments on proposed significant revisions shall be provided by placing a notice in the Federal Register. Each of these notices shall include-

(1) The text of the revision or, if it is impracticable to publish the full text, a summary of the proposal;

(2) The address and telephone number of the individual from whom copies of the revision, in full text, can be requested and to whom comments thereon should be addressed; and

(3) When 1.501-3(b) is applicable, a statement that the revision is effective on a temporary basis pending completion of the public comment period.

(c) A minimum of 30 days and, normally, at least 60 days will be given for the receipt of comments.

1.501-3 Exceptions.

(a) Comments need not be solicited when the proposed coverage does not constitute a significant revision.

(b) Advance comments need not be solicited when urgent and compelling circumstances make solicitation of comments impracticable prior to the effective date of the coverage, such as when a new statute must be implemented in a relatively short period of time. In such case, the coverage shall be issued on a temporary basis and shall provide for at least a 30 day public comment period.

1.502 Unsolicited proposed revisions.

Consideration shall also be given to unsolicited recommendations for revisions that have been submitted in writ-

ing with **sufficient** data and rationale to permit their evaluation.

1.503 Public meetings.

Public meetings may be appropriate when a decision to adopt, amend, or delete FAR coverage is likely to benefit from significant additional views and discussion.

SUBPART 1.6—CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES

1.601 General.

Authority and responsibility to contract for authorized supplies and services **are** vested in the agency head. The agency head may establish contracting activities and delegate to heads of such contracting activities broad authority to manage the agency's contracting functions. Contracts may be entered into and signed on behalf of the Government only by contracting officers. In some agencies, a relatively small number of high level **officials** are designated contracting **officers** solely by virtue of their positions. Contracting **officers** below the level of a head of a contracting activity shall be selected and appointed under 1.603.

1.602 Contracting officers.

1.602-1 Authority.

(a) Contracting **officers** have authority to enter into, administer, or terminate contracts and make related determinations and findings. Contracting officers may bind **the** Government only to the extent of the authority delegated to them. Contracting officers shall receive from the appointing authority (see 1.603-1) clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officers' authority shall be readily available to the public and agency personnel.

(b) No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.

1.602-2 Responsibilities.

Contracting **officers** are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance **with** the terms of **the** contract, and safeguarding the interests of the United States in its contractual relationships. In order to perform these responsibilities, contracting **officers** should **be** allowed wide latitude to exercise business judgment. Contracting **officers** shall—

(a) Ensure that the requirements of 1.602-1(b) have been met, and that sufficient funds are available for obligation;

(b) Ensure that contractors receive impartial, fair, and equitable treatment; and

(c) Request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate.

1.602-3 Ratification of unauthorized commitments.

(a) Definitions.

"Ratification," as used in this subsection, means the act of approving an unauthorized commitment by an official who has **the** authority to do so.

"Unauthorized commitment," as used in this subsection, means an agreement that is not binding solely because the Government representative who made it lacked the **authori-**ty to enter into that agreement on behalf of the Government.

(b) **Policy.** (1) Agencies should take positive action to preclude, to the maximum extent possible, the need for ratification actions. Although procedures are provided in this section for use in those cases where the ratification of an unauthorized commitment is necessary, these procedures may not be used in a manner that encourages such commitments being made by Government personnel.

(2) Subject to the limitations in paragraph (c) of this subsection, the head of the contracting activity, unless a higher level official is designated by the agency, may ratify an unauthorized commitment.

(3) **The** ratification authority in subparagraph (b)(2) of this subsection may be delegated in accordance with agency procedures, but in no case shall the authority be delegated below the level of chief of the contracting office.

(4) Agencies should process unauthorized commitments using the ratification authority of **this** subsection instead of referring such actions to the General Accounting **Office** for resolution. (See 1.602-3(d).)

(5) Unauthorized commitments that would involve claims subject to resolution under the Contract Disputes Act of 1978 should be processed in accordance with Subpart 33.2, Disputes and Appeals.

(c) **Limitations.** The authority in subparagraph (b)(2) of this subsection may be exercised only when—

(1) Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;

(2) The ratifying official could have granted authority to enter or could have entered into a contractual commitment at the time it was made and still has the authority to do so;

(3) The resulting contract would otherwise have been proper if made by an appropriate contracting officer;

(4) **The** contracting **officer** reviewing the unauthorized commitment determines the price to be fair and reasonable;

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL, CONFLICTS OF INTEREST 3.104-9

shall be required to comply with the certification requirements of subsection 27(e). **The SBA** shall obtain the signed **certificate** from the business entity, and forward the certificate to the contracting officer **prior** to the award of a contract to the SBA.

(G) Failure of an offeror to submit the signed certificate within the time prescribed by the contracting officer is a failure to comply with a material requirement of the solicitation and shall cause the offer to be rejected.

(c) **Contracting officer** certifications.

(1) In accordance with subsection 27(e)(2) of the Act, a Federal agency may not award a contract for the procurement of property or services, or agree to a modification of any contract, if the contract or contract modification exceeds \$100,000, unless the contracting officer responsible for such procurement-

(i) Certifies in writing to the head of such agency that, to the best of his or her knowledge and **belief**, **the** contracting officer has no information concerning a violation or possible violation of subsections 27(a), **(b)**, (d), or **(f)** of the Act (see 3.104-3), as implemented in the FAR, pertaining to such procurement; or

(ii) Discloses to the head of such agency any and all such information and certifies in writing that any and all such information has been disclosed.

(2) Immediately prior to contract award or execution of a contract modification, the contracting officer shall execute the following certificate and maintain the completed certificate in the contract file:

CONTRACTING OFFICER CERTIFICATE OF
PROCUREMENT INTEGRITY

1. I, *[Name of contracting officer]*, hereby certify that, to the best of my knowledge and belief, with the exception **I** of any information described in this certificate, I have no information concerning a violation or possible violation of subsections (a), **(b)**, (d), or **(f)** of section 27 of the **Office** of Federal Procurement Policy Act* (41 U.S.C. 423), as implemented in the FAR, occurring during the conduct of this procurement (*contract number*).

2. Violations or possible violations: (*Continue on plain bond paper if necessary, and label Contracting Officer Certificate of Procurement Integrity (Continuation Sheet)*), ENTER "NONE" IF NONE EXISTS.) _____

(Signature of contracting officer and date)

* Subsections 27(a), **(b)**, and (d), are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE

UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

(d) **Additional certifications.**

(1) Subsection 27(e)(3) of the Act provides that the head of a Federal agency may require any procurement **official** or any competing contractor, at any time during the conduct of any Federal agency procurement of property or services-

(i) To certify in writing that, to **the** best of his or her knowledge and belief, such procurement official or the officer or employee of the competing contractor responsible for the offer or bid for a contract or the modification of a contract, has no information concerning a violation or possible violation of subsections 27(a), **(b)**, **(d)**, or **(f)** of the Act (see 3.104-3), as implemented in the FAR occurring during the procurement; or

(ii) To disclose any and all such information and to certify in writing that any and **all** such information has been disclosed.

(2) In addition to **the** Head of **the** Agency, additional certifications may be required only by the HCA or his or her designee, provided that the designee is an individual of General Officer, Flag, SES or equivalent rank and is at least one organizational level above the contracting **officer**.

(3) Any additional certifications shall be submitted to the contracting officer unless another person is specified by the individual requiring the additional certifications.

(4) Each procurement official or competing contractor shall be afforded a reasonable time to comply with the additional certification requirements.

(5) A competing contractor's failure to submit any additional certifications that may be required shall cause the competing contractor's offer to be rejected.

(e) **Recordkeeping requirements.**

(1) In accordance with subsections 27(e)(5)(A) and **(B)** and 27(e)(7)(A) of the Act, the contracting officer responsible for the award or modification of a contract in excess of \$100,000 shall maintain, as part of the contract file-

(i) All competing contractor, contracting officer, and procurement official certifications required by subsections 27(e)(1), (e)(2), and (e)(4) of the Act, and any additional certifications required by subsection 27(e)(3) of the Act for that particular procurement.

(ii) All certifications required by subsection 27(i) of the Act (see 3.104-12) from individuals acting as procurement officials on behalf of the procuring agency, who are, or are employed by, contractors,

subcontractors, consultants, experts, or advisors (other than competing contractors).

(iii) A record of all persons who have been **authorized** by the Head of the Agency or the contracting officer to have access to proprietary or source selection information regarding the procurement. When classes of persons have been authorized, this record shall identify the class of persons so authorized and, to the maximum extent practicable, the names of the individuals within the class.

(2) Certifications obtained from Government officers or employees (see 3.104-4(d)) who **are** required to submit a certification under subsection 27(1) of the Act shall be maintained in accordance with agency procedures.

(3) Ethics advisory opinions shall be retained, in accordance with agency procedures, for a period of 6 years.

(f) *Exceptions to certification requirements.* Pursuant to subsection 27(e)(7)(B) of the Act, certification requirements set forth in 3.104-9 do not apply-

(1) To contracts **with** a foreign government or an international organization that are not required to be awarded using competitive procedures pursuant to section 303(c)(4) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(4), or section 2304(c)(4) of title 10, United States Code; or

(2) In an exceptional case, when **the** Head of the Agency concerned determines in writing that the **certification** requirement should be waived. This authority may not be delegated. The contracting officer shall submit the request for waiver in accordance with agency procedures. The request shall clearly identify the procurement or class of procurements and provide the rationale for the requested waiver. The decision of **the** agency head shall state the reasons for approving or disapproving **the** waiver. The agency head shall promptly notify Congress in writing of each waiver approved. Procurements for which a waiver may be appropriate include-

- (i) Where prices are set by law or regulation;
- (ii) Where terms and conditions of a contract are specified by an agreement with a foreign government or governments;
- (iii) Where supplies or services **are** provided by foreign nationals to United States facilities overseas for use outside the United States;
- (iv) Where a foreign government specifies a particular U.S. contractor to satisfy its requirements (see 6.302-4(b)(1)).

3.104-10 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the provision at 52.203-8, Requirement for Certificate of Procurement Integrity, in all solicitations where the resultant contract

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award is expected to exceed \$100,000, unless, pursuant to 3.104-9(f), a certification is not required or a waiver has been granted. For procurements using other than sealed bidding procedures, the contracting officer shall substitute Alternate I for paragraph (c) of that provision.

(b) The contracting officer shall insert the clause at 52.203-9, Requirement for Certificate of Procurement Integrity-Modification, in all solicitations where the **resultant** contract award is expected to exceed \$100,000, all contracts in excess of \$100,000, and modifications to contracts which do not already contain the clause when **the** modification is expected to exceed \$100,000, unless, pursuant to 3.104-9(f), a certificate is not **required** or a waiver has been granted.

(c) The contracting officer shall insert the clause at 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, in all solicitations where the resultant contract award is expected to exceed the small purchase limitation (see 13.000) and all contracts and modifications to contracts exceeding that limitation which do not already contain the clause when **the** modification is expected to exceed that limitation.

(d) The contracting officer shall insert the clause at 52.203-13, Procurement Integrity-Service Contracting, in all solicitations and contracts where the Government is procuring or may order the services of contractor employees to serve as procurement officials for another agency procurement. In addition, the contracting officer shall insert the provisions and clauses at 52.203-8, 52.203-9, and 52.203-10 in such solicitations and contracts as prescribed in this subsection.

3.104-11 Processing violations or possible violations.

(a) If the contracting officer makes or receives a disclosure of information pursuant to subsection 27(e) of the Act or otherwise receives or obtains information of a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act (see 3.104-3), the contracting officer shall determine whether the reported violation or possible violation has any impact on the pending award or selection of the **source** therefor.

(1) If the contracting officer concludes that there is no impact on **the** procurement, the contracting officer shall forward the information concerning **the** violation or possible violation, accompanied by appropriate documentation supporting that conclusion, to an individual designated in accordance with agency procedures. With the concurrence of that individual, the contracting officer shall, without further approval, proceed with the procurement. The individual concurring with **that** conclusion shall forward all information relating to the violation or possible violation to the HCA, or his or her designee, to satisfy the disclosure requirements of subsection 27(e)(2) of the Act.

(2) If **the** individual reviewing the contracting offi-

(b) *Format.* The contracting officer shall prepare the synopsis in the following style and format to assure timely processing of the synopsis by the Commerce Business Daily.

(1) *General.* Format for all synopses shall employ conventional typing with abbreviations, capitalization, and punctuation all grammatically correct. Each synopsis shall include all 17 format items. Do not include the title for the format item.

(2) *Spacing.* Begin each line flush left and use double spaced lines between each format item. If more than one synopsis is to be sent at one time, separate each synopsis with four line spaces and begin each synopsis with format item number 1.

(3) *Abbreviations.* Minimize abbreviations or acronyms to commonly recognized abbreviations.

(4) *Standard format.* prepare each synopsis in the following format. Begin each format item with the number of the item followed by a period (e.g., 1.). Then make two spaces after the period. Next, type the appropriate information for each format. Then conclude each format item with two exclamation points (i.e., !!). Conclude each complete synopsis, following format item 17, with five asterisks (i.e., *****).

FORMAT ITEM AND EXPLANATION/ DESCRIPTION OF ENTRY

1. **ACTION CODE.** (A single alphabetic character denoting the specific action related in the synopsis. Choices are limited to the following: P=Presolicitation Notice/Procurement; A=Award announcement; M=Modification of a previously announced procurement action (a correction to a previous CBD announcement); R=Sources Sought (includes A-76 services and architect-engineer contracts). If none of the standard codes apply, enter "N/A".)

2. **DATE.** (Date on which the synopsis is transmitted to the CBD for publication. Use a four digit number indicating month in two digits and date in two digits (MMDD). All four spaces must be used with preceding 0 for months January thru September. Format: 0225 for February 25.)

3. **YEAR.** (Two numeric digits denoting the calendar year of the synopsis. Format 85: for 1985.)

4. **FEDERAL INFORMATION PROCESSING STANDARD (FIPS) NUMBER.** (Agency code number identifying the sending agency. Normally a four or live character field. Usually numeric, but may contain one or more alphabetic characters. Reference is FIPS 95 publication by the National Institute of Standards and Technology (NIST) which identifies Federal Agencies and related organizations.)

5. **CONTRACTING OFFICE ZIP CODE.** (The geographic zip code for the contracting office. Up to

nine characters may be entered. When using a nine digit zip code, separate the first five digits and the last four digits with a dash. Format: 00000-0000.)

6. **CLASSIFICATION CODE.** (Service or supply code number; see 5.207(g). Each synopsis shall classify the contemplated contract action under the one classification code which most closely describes the acquisition. If the action is for a multiplicity of goods and/or services, the preparer should select the one category best describing the overall acquisition based upon value. Inclusion of more than one classification code, or failure to include a classification code, will result in rejection of the synopsis by the Commerce Business Daily.)

7. **CONTRACTING OFFICE ADDRESS.** (The complete name and address of the contracting office. Field length is open, but generally not expected to exceed 90 alpha-numeric characters.)

8. **SUBJECT.** (Insert classification code for ITEM 6, and a brief title description of services, supplies, or project required by the agency. This will appear in the CBD as the bold faced title in the first line of the description.) (200 character spaces available.)

9. **PROPOSED SOLICITATION NUMBER.** (Agency number for control, tracking, identification. For solicitations: if not a solicitation, enter N/A.)

10. **OPENING/CLOSING RESPONSE DATE.** (For solicitations; if not a solicitation, enter N/A. Issuing agency deadline for receipt of bids, proposals or responses. Use a six digit date. Format: MMDDYY. Explanation may appear in text of synopsis in Item 17.)

11. **CONTACT POINT/CONTRACTING OFFICER.** (Include name and telephone number of contact. Also include name and telephone number of contracting officer if different. This will appear as the first item of information in the published entry. This entry may be alpha-numeric and up to 320 character blocks in length.)

12. **CONTRACT AWARD AND SOLICITATION NUMBER.** (For awards; if not an award, enter N/A. The award, solicitation or project reference number assigned by the agency to provide a reference for bidders/subcontractors. Two hundred character spaces available for alpha-numeric entries.)

13. **CONTRACT AWARD DOLLAR AMOUNT.** (For awards; if not an award, enter N/A. A ten digit numeric field. Enter whole dollars only. Output will be preceded by a dollar sign (\$).)

14. **CONTRACT LINE ITEM NUMBER.** (For awards as desired; if not an award, enter N/A. The alpha-numeric field with dashes and slashes may not exceed 32 spaces. If sufficient space is not available, enter N/A and insert the contract line item number(s) in format item 17.)

15. **CONTRACT AWARD DATE.** (For awards; if not an award, enter N/A. A six digit entry showing the

date the award is made or the contract let. Format: MMDDYY Y.)

16. **CONTRACTOR.** (For awards; if not an award, enter N/A. Name and address of successful offeror. Four hundred character spaces allowed for full identification.)

17. **DESCRIPTION.** (Enter a clear and concise description of the action. The description may not exceed 12,000 textual characters (approximately 3-1/2 single spaced pages). The suggested sequence of the content and items for inclusion in the description are contained in 5.207(c). Insert N/A when synopsisizing awards.)

(5) *Nonapplicable format items.* When a format item is not applicable, type the item number, a period, two blank spaces, and "NA" (e.g., 10. N/A!!).

(6) The following is a sample CBD synopsis:

1. P!!
2. 0925!!
3. 85!!
4. 57936!!
5. 19111-5096!!
6. 95!!
7. Defense Industrial Supply Center, 700 Robbins Ave., Philadelphia, PA 19111-5096!!
8. 95—Steel Plate! !
9. DLA500-86-B-0090!!
10. 111585!!
11. Contact Mary Drake, 215/697-XXXX/Contracting Officer, Larry Bird, 215/697-XXXX!!
12. N/A!!
13. N/A!!
14. N/A!!
15. N/A!!
16. N/A!!
17. NSN9515-00-237-5342, Spec Mil-S-226988, 0.1875 inch thick, 96 inch width. 240 inch length. Carbon steel, 45,000 lbs. Delivery to NSY Philadelphia, PA, and NSC Norfolk, VA. Delivery by 1 Oct 86. When calling, be prepared to state name, address, and solicitation number. See note 9. All responsible sources may submit an offer which will be considered. *****

(c) *General format for Item 17, "Description."* (1) Prepare a clear and concise description of the supplies or services that is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation should be requested.

(2) Do not include In Item 17 the CBD supply or service classification code from Item 6.

(i) National Stock Number (NSN) if assigned.

(ii) Specification and whether an offeror, its product, or service must meet a **qualification** requirement in order to be eligible for award, and identification of

the **office** from which additional information about the **qualification** requirement may be obtained (see Subpart 9.2).

(iii) Manufacturer, including part number, drawing number, etc.

(iv) Size, dimensions, or other form, fit or functional description.

(v) Predominant material of manufacture.

(vi) Quantity, including any options for additional quantities.

(vii) Unit of issue.

(viii) Destination information.

(ix) Delivery schedule.

(x) Duration of the contract period.

(xi) For Architect-Engineer projects and other projects for which the supply or service codes **are** insufficient, provide brief details with respect to: location, scope of services required, cost range and limitations, type of contract, estimated starting and completion dates, and any significant evaluation factors.

(xii) Numbered notes (see 5.207(e)), including instructions for set-asides for small businesses and labor surplus area concerns.

(xiii) In the case of contract actions under Subpart 6.3, insert a statement of the reason justifying other than full and open competition, and identify the intended source(s) (see 5.207(e)(3)).

(xiv) Insert a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.

(xv) If the contracting **office** will accept requests for solicitations through alternate means (e.g., facsimile machine, Telex), provide the machine number and routing instructions.

(d) *Set-asides.* When the proposed acquisition provides for a total or partial small business or labor surplus area (LSA) set aside, the appropriate CBD Numbered Note will be cited.

(e) *Numbered Notes.*

(1) Numbered Notes are footnotes. The purpose of the Numbered Notes is to conserve space and simplify the identification of repetitive notices. An explanation of the Numbered Notes appears each week in the Monday edition of the CBD. If the Monday edition of the CBD is not printed because of a holiday, an explanation of the Numbered Notes will appear in the next day's issue. When one or more of the Notes applies to a synopsis, contracting officers should reference the note at the end of Item 17 of the synopsis; e.g., "See Note(s)". Requests to add or change Notes will be submitted through channels for approval by the DAR Council and the CAA Council. The Councils will review the Numbered Notes periodically and, as appropriate, after consultation with the initiating agency,

PART 9

CONTRACTOR QUALIFICATIONS

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debarment and suspension of contractors by agencies for the causes given in 9.4062 and 9.407-2;

(2) Provides for the listing of contractors debarred, suspended, proposed for debarment, and declared ineligible (see the definition of “ineligible” in 9.403); and

(3) Sets forth the consequences of this listing.

(b) Although this subpart does cover the listing of ineligible contractors (9.404) and the effect of this listing (9.405(b)), it does not prescribe policies and procedures governing declarations of ineligibility.

9.401 Applicability.

This subpart does not apply to the exclusion of participants or principals from Federal financial or nonfinancial assistance programs and benefits pursuant to Executive Order 12549. Such exclusions are contained within the list entitled Parties Excluded from Nonprocurement Programs of the lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.

9.402 Policy.

(a) Agencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. Debarment and suspension are discretionary actions that, taken in accordance with this subpart, are appropriate means to effectuate this policy.

(b) The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government’s protection and not for purposes of punishment. Agencies shall impose debarment or suspension to protect the Government’s interest and only for the causes and in accordance with the procedures set forth in this subpart.

(c) When more than one agency has an interest in the debarment or suspension of a contractor, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(d) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.

9.403 Definitions.

“Adequate evidence” means information sufficient to support the reasonable belief that a particular act or omission has occurred.

“Affiliates.” Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other, or (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar

management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

“Agency,” as used in this subpart, means any executive department, military department or defense agency, or other agency or independent establishment of the executive branch.

“Civil judgment” means a judgment or finding of a civil offense by any court of competent jurisdiction.

“Contractor,” as used in this subpart, means any individual or other legal entity that—

(a) Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or

(b) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.

“Conviction” means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

“Debarment,” as used in this subpart, means action taken by a debarring official under 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor so excluded is “debarred.”

“Debarring official” means (a) an agency head or (b) a designee authorized by the agency head to impose debarment.

“Indictment” means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

“Ineligible,” as used in this subpart, means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive orders, the Walsh-Healey Public Contracts Act, the Buy American Act, or the Environmental Protection Acts and Executive orders.

“Legal proceedings” means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

“Parties Excluded from Procurement Programs,” formerly referred to as the Consolidated List of Debarred, Suspended, and Ineligible Contractors, means a list compiled, maintained, and distributed by the General Services Administration, in accordance with 9.404, containing the names of contractors debarred, suspended, or

proposed for debarment by 'agencies **under** the procedures of this subpart, as well as contractors declared ineligible under other statutory or regulatory authority other than Executive Order 12549. The list of Parties Excluded from Procurement Programs is contained within the lists of Parties Excluded from Federal Procurement or **Nonprocurement** Programs.

"Preponderance of the evidence" means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

"Suspending official" means (a) an agency head or (b) a designee authorized by the agency head to impose suspension.

"Suspension," as used in this subpart, means action taken by a suspending **official** under 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor so disqualified is "suspended."

"Unfair trade practices," as used in this subpart, means the commission of any or the following acts by a contractor.

(1) A violation of Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) as determined by the International Trade Commission.

(2) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordination Committee" for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, *et seq.*) or any similar bilateral or multilateral export control agreement.

(3) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished.

9.404 Parties Excluded from Procurement Programs.

(a) **The General Services Administration (GSA) shall—**

(1) Compile and maintain a current, consolidated list of all contractors debarred, suspended, proposed for debarment, or declared ineligible by agencies or by the General Accounting Office;

(2) Periodically revise and distribute the list and issue supplements, if necessary, to all agencies and the General Accounting Office; and

(3) Include in the list the name and telephone number of the official responsible for its maintenance and distribution.

(b) The list entitled Parties Excluded from Procurement Programs shall indicate—

(1) The names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The name of the agency or other authority taking the action;

(3) The cause for the action (see 9.406-2 and 9.407-2 for causes authorized under this subpart) or other **statutory or** regulatory authority;

(4) The effect of the action;

(5) The termination date for each listing;

(6) The DUNS No.: and

(7) The name and telephone number of the point of contact for the action.

(c) Each agency shall—

(1) Notify GSA of the information required by paragraph (b) of this section within 5 working days after the action becomes effective;

(2) Notify GSA within 5 working days after modifying or rescinding an action;

(3) Notify GSA of **the** names and addresses of agency organizations that are to receive the consolidated list and the number of copies to be furnished to each;

(4) In accordance with internal retention procedures, maintain records relating to each debarment, suspension, or proposed debarment taken by the agency;

(5) Establish procedures to provide for the effective use of the Parties Excluded from Procurement Programs, including internal distribution thereof, to ensure that the agency does not solicit **offers** from, award contracts to, or consent to subcontracts with contractors on the Parties Excluded from Procurement Programs, except as otherwise provided in this **subpart**; and

(6) Direct inquiries concerning listed contractors to **the** agency or other authority that took the action.

(d) Information on the list of Parties Excluded from Procurement Programs is available as follows:

(1) The printed version is published monthly. Copies may be obtained by purchasing a yearly subscription.

(i) Federal agencies may subscribe to the list through their organization's printing and distribution **office**.

(ii) The public may subscribe by writing the Superintendent of Documents, U.S. Government Printing **Office**, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783-3238.

(2) The electronic version is updated daily and provides access to the names of **firms** and individuals on the list by using an asynchronous ASCII **terminal** (e.g., a word processor or microcomputer). Users can access the system 24 hours a day, 7 days a week using FTS 2000, or commercial telephone lines and the equipment described in the user's manual. Aside from the normal costs of local or long-distance telephone calls, **access** is free of charge to the user. To obtain a copy of the user's manual for accessing the system, contact GSA at (202) 5014740.

(3) A telephone inquiry service to answer general questions about entries on the list of Parties Excluded

from Procurement Programs is also available by **calling** GSA, at (202) 501-0688. The inquiry will be answered within one working day.

9.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the acquiring agency's head or designee determines that there is a compelling reason for such action (see 9.405-2, 9.406-1(c), 9.407-1(d), and 23.506(e)). Contractors debarred, suspended or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

(b) Contractors included on the Parties Excluded from Procurement Programs as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.

(c) Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties (see Part 28).

(d)(l) After the opening of bids or receipt of proposals, the contracting officer shall review the List of Parties Excluded from Procurement Programs.

(2) Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected unless the acquiring agency's head or designee determines in writing that there is a compelling reason to consider the bid.

(3) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the acquiring agency's head or designee determines, in writing, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated prior to award, the contracting officer may, but is not required to, consider such proposals, quotations, or offers.

(4) Immediately prior to award, the contracting officer shall again review the List to ensure that no award is made to a listed contractor.

9.405-1 Continuation of current contracts.

(a) Notwithstanding the debarment, suspension, or proposed debarment of a contractor, agencies may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the acquiring agency's head or a designee directs otherwise. A decision as to the type of termination

action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action.

(b) Agencies shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the acquiring agency's head or a designee states in writing the compelling reasons for renewal or extension.

9.405-2 Restrictions on subcontracting.

(a) When a contractor debarred, suspended, or proposed for debarment is proposed as a subcontractor for any subcontract subject to Government consent (see Subpart 44.2), contracting officers shall not consent to subcontracts with such contractors unless the acquiring agency's head or a designee states in writing the compelling reasons for this approval action. (See 9.405(b) concerning declarations of ineligibility affecting subcontracting.)

(b) The Government suspends or debar contractors to protect the Government's interests. Contractors shall not enter into any subcontract equal to or in excess of the small purchase limitation at 13.000 with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If a contractor intends to subcontract with a party that is debarred, suspended, or proposed for debarment as evidenced by the parties' inclusion on the list of Parties Excluded from Procurement Programs (see 9.404), a corporate officer or designee of the contractor is required by operation of the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, to notify the contracting officer, in writing, before entering into such subcontract. The notice must provide the following:

(1) The name of the subcontractor,

(2) The contractor's knowledge of the reasons for the subcontractor being on the list of Parties Excluded from Procurement Programs;

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the list of Parties Excluded from Procurement Programs; and

(4) The systems and procedures the contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(c) The contractor's compliance with the requirements of 52.209-6 will be reviewed during Contractor Purchasing System Reviews (see Subpart 44.3).

9.406 Debarment.

9.406-1 General.

(a) It is the debarring officials responsibility to determine whether debarment is in the Government's interest.

The debarring **official** may, in the public interest, debar a contractor for any of the causes in 9.406-2, using the procedures in 9.406-3. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the debarring **official** should consider factors such as the following:

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment

(2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring **official**.

(4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.

(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

(7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.

(8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.

(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.

(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

The existence or nonexistence of any mitigating factors or **remedial** measures such as set forth in this paragraph (a) is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarring **official**, its present responsibility and that debarment is not **necessary**.

(b) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the

debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring **official** may extend the debarment decision to include any affiliates of the contractor if they are (1) specifically named and (2) given written notice of the proposed debarment and an opportunity to respond (see 9.406-3(c)).

(c) A contractor's debarment, or proposed debarment, shall be effective throughout the executive branch of the Government, unless an acquiring agency's head or a designee (except see 23.506(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(d)(1) When the debarring official has authority to debar contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to the Federal Property Management Regulations (FPMR) 101-45.6, that official shall consider simultaneously debarring the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When debarring a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the debarment notice **shall** so indicate and the appropriate FAR and FPMR citations shall be **included**.

9.406-2 Causes for debarment.

The debarring **official** may debar a contractor for any of the causes listed in paragraphs (a) through (c) following:

(a) The debarring official may debar a contractor for a conviction of or civil judgment for-

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, **falsification** or destruction of records, making false statements, or receiving stolen property;

(4) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102-558)); or

(5) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) The debarring official may debar a contractor, based upon a preponderance of the evidence, for-

(1) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as--

(i) Willful **failure** to perform in accordance with the terms of one or more contracts; or

- (ii) A history of failure to **perform**, or of unsatisfactory performance of, one or more contracts.
- (2) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by-
 - (i) The offeror's submission of a false certification;
 - (ii) The contractor's failure to comply with its certification; or
 - (iii) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504).
- (3) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102-558)).
- (4) Commission of an unfair trade practice as defined in Section 9.403 (see section 201 of the Defense Production Act (pub. L. 102-558)).
- (c) Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

9.406-3 Procedures.

(a) *Investigation and referral* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the debarring official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* (1) Agencies shall establish procedures governing the debarment decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(2) In actions not based upon a conviction or civil judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts **material** to the proposed debarment, agencies shall also-

- (i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any **person** the agency presents; and

- (ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of proposal to debar.* A notice of proposed debarment shall be issued by the debarring official advising the contractor and any specifically named **affiliates**, by certified mail, return receipt requested—

- (1) That debarment is being considered;
- (2) Of the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;
- (3) Of the cause(s) relied upon under 9.406-2 for proposing debarment;
- (4) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;
- (5) Of the agency's procedures governing debarment decisionmaking;
- (6) Of the effect of the issuance of the notice of proposed debarment; and,
- (7) Of the potential effect of an actual debarment.

(d) *Debarring official's decision.* (1) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring **official shall make a decision on the basis of all the information in the administrative record**, including any submission made by the contractor. If no suspension is in effect, the decision shall be made within 30 working days after receipt of any information and argument submitted by the contractor, unless the debarring **official** extends this period for good cause.

(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record

- (ii) The debarring official may **refer matters** involving disputed material facts to another official for findings of fact. The debarring **official** may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

- (iii) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(3) In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.

(e) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by **certified** mail, return receipt requested-

- (i) Referring to the notice of proposed debarment;
- (ii) Specifying the reasons for debarment;
- (iii) Stating the period of debarment, including effective dates; and
- (iv) Advising that the debarment is effective throughout the executive branch of the Government

unless the head of an acquiring agency or a designee makes the statement called for by **9.406-1(c)**.

(2) If debarment is not imposed, the debarring official shall promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.

9.406-4 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, debarment should not exceed 3 years, except that debarment for violation of the provisions of the Drug-Free Workplace Act of 1988 (see 23.506) may be for a period not to exceed 5 years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend the debarment for an additional period, if that official determines that an extension is necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of **9.406-3** above shall be followed to extend the debarment.

(c) The debarring official may reduce the period or extent of debarment, upon the contractor's request, supported by documentation, for reasons such as—

- (1) Newly discovered material evidence;
- (2) Reversal of the conviction or civil judgment upon which the debarment was based;
- (3) Bona fide change in ownership or management;
- (4) Elimination of other causes for which the debarment was imposed; or
- (5) Other reasons the debarring official deems appropriate.

9.406-5 Scope of debarment.

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowl-

edge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

9.407 suspension.

9.407-1 General.

(a) The suspending official may, in the public interest, suspend a contractor for any of the causes in 9.407-2, using the procedures in 9.407-3.

(b)(1) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, agencies should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts, inspection reports, and correspondence.

(2) The existence of a cause for suspension does not necessarily require that the contractor be suspended. The suspending official should consider the seriousness of the contractor's acts or omissions and may, but is not required to, consider remedial measures or mitigating factors, such as those set forth in **9.406-1(a)**. A contractor has the burden of promptly presenting to the suspending official evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists. The existence or nonexistence of any remedial measures or mitigating factors is not necessarily determinative of a contractor's present responsibility.

(c) Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending official may extend the suspension decision to include any affiliates of the contractor if they are (1) specifically named and (2) given written notice of the suspension and an opportunity to respond (see 9.407-3(c)).

(d) A contractor's suspension shall be effective throughout the executive branch of the Government, unless an acquiring agency's head or a designee (except see 23.506(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(e)(1) When the suspending official has authority to suspend contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to FPMR 10145.6, that official shall consider simultaneously suspending the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When suspending a contractor from the award of

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acquisition contracts and from the purchase of Federal personal property, the suspension notice shall so indicate and the appropriate FAR and FPMR citations shall be included

9.407-2 Causes for suspension.

(a) The suspending official may suspend a contractor suspected, upon adequate evidence, of-

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(4) Violations of the Drug-Free Workplace Act of 1988 (Rub. L. 100-690), as indicated by-

(i) The offeror's submission of a false certification;

(ii) The contractor's failure to comply with its certification; or

(iii) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504).

(5) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Rub. L. 102-558));

(6) Commission of an unfair trade practice as defined in 9.403 (see section 201 of the Defense Production Act (Rub. L. 102-558)); or

(7) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) Indictment for any of the causes in paragraph (a) above constitutes adequate evidence for suspension.

(c) The suspending official may upon adequate evidence also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

9.407-3 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the suspending official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* (1) Agencies shall establish procedures governing the suspension decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(2) In actions not based on an indictment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, agencies shall also-

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of suspension.* When a contractor and any specifically named affiliates are suspended, they shall be immediately advised by certified mail, return receipt requested-

(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities (i) of a serious nature in business dealings with the Government or (ii) seriously reflecting on the propriety of further Government dealings with the contractor-any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

(3) Of the cause(s) relied upon under 9.407-2 for imposing suspension;

(4) Of the effect of the suspension;

(5) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over the material facts; and

(6) That additional proceedings to determine disputed material facts will be conducted unless (i) the action is

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PART 10

SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

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PART 10

**SPECIFICATIONS, STANDARDS, AND
OTHER PURCHASE DESCRIPTIONS**

10.000 Scope of part.

This part prescribes policies and procedures for using specifications, standards, and other purchase descriptions, and related considerations of acquisition streamlining (see 7.101).

10.001 Definitions.

“Brand-name description” means a purchase description that identifies a product by its brand name and model or part number or other appropriate nomenclature by which the product is offered for sale.

“Commercial item description” (CID) means an indexed, simplified product description managed by the General Services Administration (GSA) that describes, by functional, performance, or essential physical requirements, the available, acceptable commercial products that will satisfy the Government’s needs.

“Department of Defense Index of Specifications and Standards” (DODISS) means the Department of Defense (DOD) publication that lists unclassified Federal and military specifications and standards, related standardization documents, and voluntary standards approved for use by DOD.

“Federal specification or standard” means a specification or standard issued or controlled by the General Services Administration (GSA) and listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

“General Services Administration Index of Federal Specifications, Standards and Commercial Item Descriptions” means the GSA publication that lists Federal specifications and standards, including supplements, that have been implemented for use by all Federal agencies.

“Market research” means the process used for collecting and analyzing information about the entire market available to satisfy the minimum agency needs to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.

“Product description” is the generic term for documents used for acquisition and management purposes, such as specifications, standards, voluntary standards, CID’s, or purchase descriptions.

“Purchase description*” means a description of the essen-

tial physical characteristics and functions required to meet the Government’s minimum needs.

“Responsible agency” means the agency controlling the index in which a particular specification or standard is listed.

“Specification” means a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. Specifications shall state only the Government’s actual minimum needs and be designed to promote full and open competition, with due regard to the nature of the supplies or services to be acquired.

“Standard” means a document that establishes engineering and technical limitations and applications of items, materials, processes, methods, designs, and engineering practices. It includes any related criteria deemed essential to achieve the highest practical degree of uniformity in materials or products, or interchangeability of parts used in those products. Standards may be used in specifications, invitations for bids, requests for proposals, and contracts.

“Voluntary standard” means a standard established by a private sector body and available for public use. The term does not include private standards of individual firms. For further guidance, see OMB Circular No. A-119, Federal Participation in Development and Use of Voluntary Standards.

10.002 Policy.

(a) In fulfilling the requirements of 10 U.S.C. 2305(a)(1) and 41 U.S.C. 253a(a) regarding the preparation for acquisition of supplies and services:

(1) Agencies shall specify needs in a manner designed to promote full and open competition (see Part 6) for acquisitions.

(2) Agencies shall develop specifications and purchase descriptions using market research in a manner designed to promote full and open competition, with due regard to the nature of the supplies or services to be acquired.

(3) In solicitations, agencies shall include specifications and purchase descriptions that-

(i) Permit full and open competition: and

(ii) Include restrictive provisions or conditions only to the extent necessary to satisfy the minimum needs of the agency or as authorized by law.

(4) Agencies shall prepare specifications and purchase descriptions which reflect the minimum needs of the agency and the market available to satisfy such

needs. Specifications and purchase descriptions may be stated in **terms** of-

- (i) Function, so that a variety of products or services may qualify;
- (ii) Performance, including specifications of the range of acceptance characteristics or of the minimum acceptable standards; or
- (iii) Design requirements.

(b) Acquisition policies and procedures shall require descriptions of agency requirements, whenever practicable, to be stated in terms of functions **to be** performed or performance required.

(c) The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, et seq.), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce. It also requires that each Federal agency, by a date certain and to the extent economically feasible by the end of fiscal year 1992, use the metric system of measurement in its procurements, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms. Requiring activities are responsible for establishing guidance implementing this policy in formulating their requirements for acquisitions.

(d) To the maximum practicable extent, unless inconsistent with applicable law or incapable of meeting the Government's needs, agencies shall use the following types of product descriptions, which are listed in descending order of preference:

- (1) Voluntary standards;
- (2) CID's in the acquisition of commercial or commercial-type products;
- (3) Government product descriptions stated predominantly in terms of functions to be performed or performance required;
- (4) Government product descriptions stated predominantly in terms of material, finish, schematics, tolerances, operating characteristics, component parts, or other design requirements.

(e) Requiring agencies, for programs which they have designated as subject to acquisition streamlining, should apply specifications, standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely. The objective of acquisition streamlining is to reduce the time and cost, and improve the quality of systems acquisitions, by ensuring that contracts contain only those necessary **specifications**, standards, and related documents which have been tailored for application at the most appropriate time in the system acquisition cycle. To the extent practicable, contractors should **be** involved in recommending application and tailoring of such specifications, stan-

dards, and related documents in one phase for proposed application to the succeeding phase of the acquisition cycle.

10.003 Responsibilities.

(a) The Administrator of GSA, under separate authority and regulations, prepares, maintains, and controls specifications and standards covering products commonly used by Government agencies, and lists those descriptions in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

(b) The Secretary of Defense, under separate authority and regulations, prepares, maintains, and controls military specifications, standards, and other documents unique to DOD and lists those product descriptions in the DODISS.

10.004 Selecting specifications or descriptions for use.

(a)(1) Plans, drawings, specifications, standards, or purchase descriptions for acquisitions shall state only the Government's actual minimum needs and describe the supplies **and/or** services in a manner designed to promote full and open competition.

(2) Items to be acquired **shall** be described (i) by citing the applicable specifications and standards or (ii) by a description containing **the** necessary requirements.

(3) Specifications and standards shall be selectively applied and tailored in their application.

(i) "Selective application" is the process of reviewing and selecting from available specifications, standards, and related documents those which have application to a particular acquisition.

(ii) "Tailoring" is the process by which individual sections, paragraphs or sentences of the selected specifications, standards, and related document are reviewed and modified so that each one selected states only the Government's minimum requirements. Such tailoring need not be made a part of the basic **specification** or standard but will vary with each application, dependent upon the nature of the acquisition.

(b)(1) When authorized by 10.006(a), or when no applicable specification exists, agencies may use a purchase description, subject to pertinent restrictions on repetitive use. An adequate purchase description should set forth the essential physical and functional characteristics of the materials or services required. As many of the following characteristics as are necessary to express the Government's minimum requirements should be used in preparing purchase descriptions:

- (i) Common nomenclature.
- (ii) Kind of material; i.e., type, grade, alternatives, etc.
- (iii) Electrical data, if any.
- (iv) Dimensions, size, or capacity.
- (v) Principles of operation.

- (vi) Restrictive environmental conditions.
- (vii) Intended use, including-
 - (A) Location within an assembly; and
 - (B) Essential operating condition.
- (viii) Equipment with which the item is to be

Used.

(ix) Other pertinent information that further describes the item, material, or service required.

(2) Purchase descriptions shall not be written so as to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless-

(i) The particular brand name, product, or feature is essential to the Government's requirements, and that other companies' similar products, or products lacking the particular feature, would not meet the minimum requirements for the item; and

(ii) The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302-1).

(3) Generally, the minimum acceptable purchase description is the identification of a requirement by use of brand name followed by the words "or equal." This technique should be used only when an adequate specification or more detailed description cannot feasibly be made available by means other than inspection and analysis in time for the acquisition under consideration. Agencies should provide detailed guidance and necessary clauses for use by contracting activities when using this technique.

(4) Purchase descriptions of services should outline to the greatest degree practicable the specific services the contractor is expected to perform.

(c) Except as provided in (b) above, when considering the acquisition of products sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices, agencies should consult Part 11 and implementing agency regulations for guidance on acquiring commercial products.

(d) *Foreign purchase descriptions.* Unless precluded by law, products that are acquired overseas may be acquired by using purchase descriptions prepared by foreign governments or foreign industry associations, if the description will satisfy the agency's actual minimum requirements.

(e) *Packing, packaging, and marking requirements.* In accordance with agency regulations, contracting offices shall require adequate packaging and marking of supplies to prevent deterioration and damage during shipping, handling, and storage. In acquiring commercial products, contracting offices should consult Part 11 and implementing agency regulations.

10.005 Management of purchase descriptions.

(a) Responsible agencies shall ensure compliance with the policies prescribed in this part for all specifications and standards listed in their indexes.

(b) When a responsible agency determines, in accordance with its established procedures and criteria, that a listed specification or standard does not meet a particular minimum need of the Government, applicable amendments, revisions, or new descriptions shall be prepared and used. (See 10.007 with regard to deviations.)

(c) Recommendations for changes in specifications and standards listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions should be submitted to the General Services Administration, Federal Supply Service, Item Management Division, Washington, D.C. 20406. Recommendations for changes in military specifications and standards and other standardization documents listed in the DODISS should be submitted to the cognizant preparing activity.

10.006 Mandatory product descriptions.

(a) Unless otherwise authorized by law or approved under 10.007(a), product descriptions listed in the Index of Federal Specifications, Standards and Commercial Item Descriptions are mandatory for use by all agencies, and product descriptions listed in the DODISS are mandatory for use by the DOD, if acquiring supplies or services covered by such product descriptions, except if the acquisition is-

(1) Required under an unusual and compelling urgency, and using the indexed product description would delay obtaining the requirement;

(2) Conducted in accordance with the procedures in Part 13;

(3) For products acquired and used overseas;

(4) For items, excluding military clothing, acquired for authorized resale;

(5) For construction or new installations of equipment, where nationally recognized industry or technical source specifications and standards are available; or

(6) For a product or service for which an adequate and appropriate voluntary standard is known to exist but has not yet been adopted and listed in the indexes referenced in this section.

(b) *Commercial exception.* (1) In addition to the exceptions given in paragraph (a) above, agencies should consider stating their needs in a purchase description, when appropriate under Part 11 and implementing agency regulations, even though there is an indexed specification.

(2) The agency responsible for a specification may designate it as one for which this exception cannot be used, if the agency head or a designee determines this to be necessary.

10.007 Deviations.

When the exceptions in 10.006 above do not apply and an existing specification does not meet an agency's minimum needs, agencies may authorize deviations as follows:

(a) **Each** agency taking deviations shall establish procedures whereby a designated official having substantial contracting responsibility shall be responsible for ensuring that-

(1) Federal specifications are used and requirements for exceptions and deviations are complied with;

(2) Justification for exceptions and deviations are subject to competent review before authorization, and that such justifications can be fully substantiated if post audit is required;

(3) Major or repeated deviations are not taken except as prescribed in (b) below; and

(4) Notification of deviation or recommendation for change in the specification is sent promptly in duplicate to the General Services Administration (FCM), Washington, DC 20406. (A statement of the deviations with a justification and, where applicable, recommendation for revision or amendment of the specification **shall** be included. A notification is required for major deviations such as those that will result in the introduction of a new item of supply as evidenced by the development of a new item identification, or when a deviation is taken repeatedly.)

(b) Deviations taken and reported by the agency in accordance with (a) above may not be continued, except under the following conditions:

(1) When an agency submits notification of major or repeated deviations that have been taken but makes no recommendation for change in **the specification**, GSA will notify the agency as to whether such deviations may be continued in subsequent contracting. In cases where continued deviations are not approved and the agency contracting has progressed to a point where it would be impracticable to amend or cancel the action, such action may be completed, but the deviation shall not be continued by the agency in subsequent contracts.

(2) When an agency has recommended changing the specification consistent **with** the deviations it has taken and reported, those deviations may be continued until such time as the recommended change is incorporated in the specification. When coordination with Federal agencies and industry does not result in acceptance of the change, such deviations shall not be continued by the agency in subsequent contracts.

(c) Deviations from military specifications shall be in accordance with any applicable DOD regulations.

10.008 Identification and availability of specifications.

(a) Solicitations citing specifications listed in **the** GSA Index of Federal Specifications, Standards and Commercial

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Item Descriptions, DODISS, or other agency index shall identify each specification's approval date and the dates of any applicable amendments and revisions. Contracting **offices** will not normally furnish these cited **specifications** with the solicitation, except when-

(1) The product being acquired will be so complex that the specification must be furnished **with** the solicitation to enable prospective contractors to make a **competent** initial evaluation of the solicitation;

(2) In the judgment of the contracting officer, it would be impracticable for prospective contractors to obtain the specifications in reasonable time to respond to the solicitation: or

(3) A prospective contractor who has not previously bid on the product requests a copy of the specification.

(b) Solicitations shall not contain general identification references such as "the issue in effect on the date of the solicitation.*"

(c) Solicitations citing voluntary standards shall advise offerors to obtain the standards from the publisher.

(d) Contracting offices shall clearly identify in the solicitation specifications and any other pertinent documents not listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions or DODISS and normally furnish them with the solicitation.

(e) When specifications refer to other specifications, such references shall (1) be restricted to documents, or appropriate portions of documents, that shall apply in **the** acquisition: (2) cite the extent of their applicability: (3) not conflict with other specifications and provisions of the solicitation; and (4) identify all applicable first tier references.

(f) Contracting **offices** shall furnish with the solicitation any brand name or equal description used.

(g) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions and DODISS may be purchased from the Superintendent of Documents, US. Government Printing Office, Washington, D.C. 20402.

10.009 User satisfaction.

(a) Agencies shall encourage users to communicate with acquisition organizations on-

(1) The adequacy of specifications to communicate the user's minimum needs;

(2) **Product** capability;

(3) Product failures and deficiencies; and

(4) **Suggestions** for corrective actions.

(b) Whenever practicable, **the** agency may provide affected industry an opportunity to comment on the critiques.

(c) Acquisition organizations shall consider user critiques and take appropriate action on bona **fide** complaints and suggestions.

promotion);

(3) Normal quantity per order; and

(4) Annual volume of sales to largest customers

(i) **Waiver for exceptional cases.** The agency head (or, if the contract is with a foreign government or agency, the head of the contracting activity) may, in exceptional cases, waive the requirement for submission of **certified** cost or pricing data. The authorization for the waiver and the reasons for granting it shall be in writing. The agency head may delegate this authority. When the agency head or designee has waived the requirement for submission of certified cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to make available cost or pricing data for purposes of 15.804-2(a)(1)(iii). Consequently, award of any lower-tier subcontract expected to exceed the pertinent threshold set forth at 15.804-2(a)(1) requires the submission of certified cost or pricing data unless exempt or waived under this subsection 15.804-3.

15.804-4 Certificate of Current Cost or Pricing Data.

(a) When certified cost or pricing data are required under 15.804-2, the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, shown below, and shall include the executed certificate in the contract file. The certificate states that the cost or pricing data are accurate, complete, and current as of the date the contractor and the Government agreed on a price. Only one certificate shall be required; the contractor shall submit it as soon as practicable after price agreement is reached.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.801 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.804-2) submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of* are accurate, complete, and current as of**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm _____

I S i g n a t u r e _____

Name _____

Title _____

Date of execution*** _____

* Identify the proposal, quotation, request for price

adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

** Insert the day, month, and year **when** price negotiations were concluded and price agreement was reached.

*** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(End of certificate)

(b) The certificate does not constitute a representation as to the accuracy of the contractor's judgment on the estimate of future costs or projections. It does apply to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the contractor had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the contractor's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal. Certain data may not be reasonably available before normal periodic closing dates (e.g., actual indirect costs). Before agreement on price, the contractor **shall** update all data as of the latest dates for which information is reasonably available. Data within the contractor's or a subcontractor's **organization** on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(d) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the contractor's proposal.

(e) Even though the solicitation may have requested cost or pricing data, the contracting officer shall not require a Certificate of Current Cost or Pricing Data when the resulting award is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation (see 15.804-3(a) through (d)).

(f) The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used does not require recertification.

(g) Contracting officers shall not require certification at the time of agreement for data supplied in support of forward pricing rate agreements (see 15.809) or other advance agreements. When a forward pricing rate agreement or other advance agreement is used in partial support of a later contractual action that requires a certificate, the price proposal certificate shall cover (1) the data originally supplied to support the forward pricing rate agreement or other advance agreement and (2) all data required to update the price proposal to the time of agreement on contract price.

(h) **Negotiated final** pricing actions (such as termination settlements and total final price agreements for fixed-price

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incentive and redeterminable contracts) are contract modifications requiring certified cost or pricing data if (1) the total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at 15.804-2(a)(1) or (2) the partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at 15.804-2(a)(1) (see 49.105(c)(15)).

15.804-5 Reserved.

15.804-6 Submission of data.

(a)(1) The contracting officer shall specify (i) whether or not cost or pricing data are required, (ii) whether or not certification will be required, and (iii) the form (see paragraph (b) of this subsection) in which the cost or pricing data shall be submitted. Even if the solicitation does not so specify, however, the contracting officer is not precluded from requesting such data if they are later found necessary.

(2) When certified cost or pricing data are not required because an action is below the pertinent thresh-

old set forth at 15.804-2(a)(1), the contracting officer may request partial or limited data to determine a reasonable price. The contracting officer shall request only that data which the contracting officer considers necessary to determine a reasonable price. For example, cost data might be necessary to support an analysis of material costs, but not for labor and overhead costs. When such partial or limited data are requested, the contracting officer should require, as a minimum, the submission of information on the prices and quantities at which the offeror has previously sold the same or similar products.

(b)(1) Cost or pricing data shall be submitted on Standard Form 1411 (SF 1411), Contract Pricing Proposal Cover Sheet, unless required to be submitted on one of the termination forms specified in Subpart 49.6. Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a format acceptable to the contracting officer.

(2) Contract pricing proposals submitted on SF 1411 with supporting attachments shall be prepared to satisfy the instructions and appropriate format of Table 15-2.

TABLE 15-2 INSTRUCTIONS FOR SUBMISSION OF A CONTRACT PRICING PROPOSAL

1. SF 1411 provides a vehicle for the offeror to submit to the Government a pricing proposal of estimated and/or incurred costs by contract line item with supporting information, adequately cross-referenced, suitable for detailed analysis. A cost-element breakdown, using the applicable format prescribed in 8A, B, or C below, shall be attached for each proposed line item and must reflect any specific requirements established by the contracting officer. Supporting breakdowns must be furnished for each cost element, consistent with offeror's cost accounting system.

When more than one contract line item is proposed, summary total amounts covering all line items must be furnished for each cost element. If agreement has been reached with Government representatives on use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature. Depending on offeror's system, breakdowns shall be provided for the following basic elements of cost, as applicable:

Materials-Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price.

Competitive Methods-For those acquisitions (e.g., subcontracts, purchase orders, material orders, etc.) exceeding the pertinent threshold set forth at 15.804-2(a)(1) priced on a competitive basis, also provide data showing degree of competition, and the basis for establishing the source and reasonableness of price. For interorganizational transfers priced at other than cost of the comparable competitive commercial work of the division, subsidiary, or affiliate of the contractor, explain the pricing method (see 31.205-26(e)).

Established Catalog or Market Prices/Prices Set by Law or Regulation-When an exemption from the requirement to submit cost or pricing data is claimed, whether the item was produced by others or by the offeror, provide justification for the exemption as required by 15.804-3(e).

Noncompetitive Methods-For those acquisitions (e.g., subcontracts, purchase orders, material orders, etc.) exceeding the pertinent threshold set forth at 15.804-2(a)(1) priced on a noncompetitive basis, also provide data showing the basis for establishing source and reasonableness of price. For standard commercial items fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost by elements. As required by 15.806-2(a), provide a copy of cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order that is either: (i) \$1,000,000 or more, or (ii) both more than the pertinent threshold set forth in 15.804-2(a)(1)(iii) and (iv) and more than 10 percent of the prime contractor's proposed price. The contracting officer may require submission of cost or pricing data in support of proposals in lower amounts. Submit the results of the analysis of the prospective source's proposal as required by 15.806. When the submission of a prospective source's cost or pricing data is required as described above, it shall be included as part of the offeror's initial pricing proposal.

on a competitive basis or supported by valid cost or pricing data;

(c) Available cost or pricing information permits realistic estimates of the probable costs of performance; or

(d) Performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm fixed price representing assumption of the risks involved.

16.203 Fixed-price contracts with economic price adjustment.

16.203-1 Description.

A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon the occurrence of specified contingencies. Economic price adjustments are of three general types:

(a) *Adjustments based on established prices.* These price adjustments are based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items or the contract end items.

(b) *Adjustments based on actual costs of labor or material.* These price adjustments are based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance.

(c) *Adjustments based on cost indexes of labor or material.* These price adjustments are based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract

16.203-2 Application.

A fixed-price contract with economic price adjustment may be used when (i) there is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance, and (ii) contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract. Price adjustments based on established prices should normally be restricted to industry-wide contingencies. Price adjustments based on labor and material costs should be limited to contingencies beyond the contractor's control. For use of economic price adjustment in sealed bid contracts, see 14.4074.

(a) In establishing the base level from which adjustment will be made, the contracting officer shall ensure that contingency allowances are not duplicated by inclusion in both the base price and the adjustment requested by the contractor under economic price adjustment clause.

(b) In contracts that do not require submission of cost or pricing data, the contracting officer shall obtain adequate information to establish the base level from which adjustment will be made and may require verification of data submitted.

16.203-3 Limitations.

A fixed-price contract with economic price adjustment shall not be used unless the contracting officer determines that it is necessary either to protect the contractor and the Government against significant fluctuations in labor or material costs or to provide for contract price adjustment in the event of changes in the contractor's established prices.

16.203-4 Contract clauses.

(a) *Adjustment based on established prices—standard supplies.* (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-2, Economic Price Adjustment-Standard Supplies, or an agency-prescribed clause as authorized in subparagraph (2) below, in solicitations and contracts when all of the following conditions apply:

(i) A fixed-price contract is contemplated.

(ii) The requirement is for standard supplies that have an established catalog or market price, verified using the criteria in 15.804-3.

(iii) The contracting officer has made the determination specified in 16.203-3.

(2) If all the conditions in subparagraph (a)(1) above apply and the contracting officer determines that the use of the clause at 52.216-2 is inappropriate, the contracting officer may use an agency-prescribed clause instead of the clause at 52.216-2.

(3) If the negotiated unit price reflects a net price after applying a trade discount from a catalog or list price, the contracting officer shall document in the contract file both the catalog or list price and the discount. (This does not apply to prompt payment or cash discounts.)

(b) *Adjustment based on established prices—semistandard supplies.* (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-3, Economic Price Adjustment-Semistandard Supplies, or an agency-prescribed clause as authorized in subparagraph (2) below, in solicitations and contracts when all of the following conditions apply:

(i) A fixed-price contract is contemplated.

(ii) The requirement is for semistandard supplies for which the prices can be reasonably related to the prices of nearly equivalent standard supplies that have an established catalog or market price, verified using the criteria in 15.804-3.

(iii) The contracting officer has made the determination specified in 16.203-3.

(2) If all conditions in subparagraph (b)(1) above apply and the contracting officer determines that the use of the clause at 52.216-3 is inappropriate, the contracting officer may use an agency-prescribed clause instead of the clause at 52.216-3.

(3) If the negotiated unit price reflects a net price after applying a trade discount from a catalog or list

price, the contracting officer shall document in the contract file both the catalog or list price and the discount. (This does not apply to prompt payment or cash discounts.)

(4) Before entering into the contract, ~~the~~ contracting officer and contractor must agree in writing on the identity of the standard supplies and the corresponding contract line items to which the clause applies.

(5) If the supplies are standard, except for preservation, packaging, and packing requirements, the clause prescribed in 16.203-Q(a) shall be used rather than this clause.

(c) *Adjustments based on actual cost of labor or material.* (1) The contracting officer shall, when contracting by negotiation, insert a clause that is substantially the same as the clause at 52.216-4, Economic Price Adjustment -Labor and Material, or an agency-prescribed clause as authorized in subparagraph (2) below, in solicitations and contracts when all of the following conditions apply:

- (i) A fixed-price contract is contemplated.
- (ii) There is no major element of design ~~engineering~~ or development work involved.
- (iii) One or more identifiable labor or material cost factors are subject to change.
- (iv) The contracting officer has made the determination specified in 16.203-3.

(2) If all conditions in subparagraph (c)(1) above apply and the contracting officer determines that the use of the clause at 52.216-4 is inappropriate, the contracting officer may use an agency-prescribed clause instead of the clause at 52.216-4.

(3) The contracting officer shall describe in detail in the contract Schedule-

- (i) The types of labor and materials subject to adjustment under the clause;
- (ii) The labor rates, including fringe benefits (if any) and unit prices of materials that may be increased or decreased; and
- (iii) The quantities of the specified labor and materials allocable to each unit to be delivered under the contract.

(4) In negotiating adjustments under the clause, the contracting officer shall-

- (i) Consider work in process and materials on hand at ~~the~~ time of changes in labor rates, including fringe benefits (if any) or material prices;
- (ii) Not include in adjustments any indirect cost (except fringe benefits as defined in 31.205-6(m)) or profit; and
- (iii) Consider only those fringe benefits specified in the contract Schedule.

(d) *Adjustments based on cost indexes of labor or material.* The contracting officer should consider using an economic price adjustment clause based on cost indexes of labor or material under the circumstances and subject to

approval as described in subparagraphs (1) and (2) below.

(1) A clause providing adjustment based on cost indexes of labor or materials may be appropriate when-

(i) The contract involves an extended period of performance with significant costs to be incurred beyond 1 year after performance begins;

(ii) The contract amount subject to adjustment is substantial; and

(iii) The economic variables for labor and materials are too unstable to permit a reasonable division of risk between the Government and the contractor, without this type of clause.

(2) Any ~~clause using~~ this method shall be prepared and approved under agency procedures. Because of the variations in circumstances and clause wording that may arise, no standard clause is prescribed.

16.204 Fixed-price incentive contracts.

A fixed-price incentive contract is a **fixed-price** contract that provides for adjusting profit and establishing the final contract price by a formula based on the relationship of final negotiated total cost to total target cost. Fixed-price incentive contracts are covered in Subpart 16.4, Incentive Contracts. See 16.403 for more complete descriptions, application, and limitations for these contracts. Prescribed clauses are found at 16.405.

16.205 Fixed-price contracts with prospective price redetermination.

16.205-1 Description.

A **fixed-price** contract with prospective price redetermination provides for (a) a **firm fixed** price for an initial period of contract deliveries or performance and (b) prospective redetermination, at a stated time or times during performance, of the price for subsequent periods of performance.

16.205-2 Application.

A fixed-price contract with prospective price redetermination may be used in acquisitions of quantity production or services for which it is possible to negotiate a fair and reasonable **firm fixed** price for an initial period, but not for subsequent periods of contract performance.

(a) The initial period should be the longest period for which it is possible to negotiate a fair and **reasonable firm** fixed price. Each subsequent pricing period should be at least 12 months.

(b) The contract may provide for a ceiling price based on evaluation of the uncertainties involved in performance and their possible cost impact. This ceiling price should provide for assumption of a reasonable proportion of the risk by the contractor and, once established, may be adjusted only by operation of contract clauses providing for equi-

acquisition if it meets the size qualifications of a small nonmanufacturer for the acquisition, and if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business.

(3) If the acquisition is subject to and is actually procured **under** “small purchase procedures”. such **nonman-**ufacturer may furnish any domestically produced or manufactured product.

(4) For the purpose of receiving a Certificate of Competency on an unrestricted acquisition, a small business nonmanufacturer may furnish any domestically produced or manufactured product.

(5) In the case of acquisitions set aside for small business or awarded under section 8(a) of the Small Business Act, when the acquisition is for a specific product (or a product in a class of products) for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, **then—**

- I (i) In such cases, section 8(a)(17)(A) of the Small Business Act provides that the nonmanufacturer may furnish any domestic product if such nonmanufacturer is primarily engaged in the wholesale or retail trade and is a regular dealer, as defined pursuant to 41 U.S.C. 35(a) (see 22.601), in the product to be offered unless specifically exempted from section 35(a) by section 7(j)(13)(C) of the Small Business Act. For the most current listing of classes for which SBA has granted a waiver, contact the

regional SBA office. A listing is also available in the **SBA's** Procurement Automated Source System (PASS).

(ii) Contracting officers may request that the SBA waive the nonmanufacturer rule for a particular class of products.

(6) For a specific solicitation, a contracting officer may request a waiver of that part of the nonmanufacturer rule which requires that the actual manufacturer or processor be a small business concern if no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation.

(7) Requests for waivers shall be sent to the Associate Administrator for Government Contracting, United States Small Business Administration, Mail Code 6250, 409 Third Street, SW, Washington, DC 20416.

(g) The industry size standards are set forth in the following table. The table column labeled “SIC” follows the standard industrial classification code as published by the Government in the Standard Industrial Classification Manual. The Manual is intended to cover the entire field of economic activities. It classifies and defines activities by industry categories and is the source used by SBA as a guide in **defining** industries for size standards. The number of employees or annual receipts indicates the maximum allowed for a concern, including its affiliates, to be considered small.

SIC	DESCRIPTION	SIZE
5561	Recreational Vehicle Dealers	\$3.5
5571	Motorcycle Dealers	\$3.5
5599	Automotive Dealers, N.E.C. ¹²	\$3.5
Major Group 56—Apparel and Accessory Stores		
5611	Men's and Boys' Clothing and Furnishings stores	\$4.5
5621	Women's Ready-to-Wear Stores	\$4.5
5632	Women's Accessory and Specialty stores	\$3.5
5641	Children's and Infants' Wear Stores	\$3.5
5651	Family Clothing Stores	\$4.5
5661	Shoe Stores	\$4.5
5699	Miscellaneous Apparel and Accessory Stores	\$3.5
Major Group 57—Furniture, Home Furnishings, and Equipment Stores		
5712	Furniture Stores	\$3.5
5713	Floor Covering Stores	\$3.5
5714	Drapery, Curtain, and Upholstery Stores	\$3.5
5719	Miscellaneous Home Furnishing Stores	\$3.5
5722	Household Appliance Stores	\$4.5
5731	Radio, Television and Electronics Stores	\$4.5
5734	Computer and Software Stores	\$4.5
5735	Record and Prerecorded Tapes Stores	\$3.5
5736	Musical Instrument Stores	\$3.5
Major Group 58—Eating and Drinking Places		
5812	Eating Places (Except Food Services)	\$3.5
5812	Food Services	\$10.0
5813	Drinking Places (Alcoholic Beverages)	\$3.5
Major Group 59—Miscellaneous Retail		
5912	Drug Stores and Proprietary Stores	\$3.5
5921	Liquor Stores	\$3.5
5932	Used Merchandise Stores	\$3.5
5941	Sporting Goods Stores and Bicycle Shops	\$3.5
5942	Book Stores	\$3.5
5943	Stationery Stores	\$3.5
5944	Jewelry Stores	\$3.5
5945	Hobby, Toy, and Game Shops	\$3.5
5946	Camera and Photographic Supply Stores ..	\$3.5
5947	Gift, Novelty, and Souvenir Shops	\$3.5
5948	Luggage and Leather Goods Stores ..	\$3.5
5949	Sewing, Needlework, and Piece Goods stores	\$3.5
5961	Mail Order Houses	\$12.5
5962	Automatic Merchandising Machine operators	\$3.5
5963	Direct Selling Establishments ..	\$3.5

SIC	DESCRIPTION	SIZE
5983	Fuel Oil Dealers	\$6.0
5984	Liquefied Petroleum Gas (Bottled Gas) Dealers	\$3.5
5989	Fuel Dealers, N.E.C.	\$3.5
5992	Florists	\$3.5
5993	Cigar Stores and Stands	\$3.5
5994	News Dealers and Newsstands ..	\$3.5
5995	Opticians Stores ..	\$3.5
5999	Miscellaneous Retail Stores, N.E.C.	\$3.5

DIVISION H—FINANCE, INSURANCE, AND REAL ESTATE¹³

Major Group 60—Banking

6021	National Banks	¹⁴ \$100
6022	State Commercial Banks	¹⁴ \$100
6029	Commercial Banks, N.E.C.	¹⁴ \$100
6035	Savings Institutions, Federally Chartered	¹⁴ \$100
6036	Savings Institutions, Not Federally Chartered	¹⁴ \$100

Major Group 62—Security and Commodity Brokers, Dealers, Exchanges, and Services

6221	Commodity Contracts, Brokers; and Dealers	\$3.5
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Major Group 63—Insurance

6331	Fire, Marine, and Casualty Insurance	1,500
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Major Group 64—Insurance Agents, Brokers, and Service

6411	Insurance Agents, Brokers, and Service	\$3.5
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Major Group 65—Real Estate

6515	Operators of Residential Mobile Home Sites ..	\$3.5
---	Leasing of Building Space to Federal Government by Owners ¹⁵	\$10.0
6531	Real Estate Agents and Managers	¹⁰ \$1.0

DIVISION I—SERVICES¹⁶

Major Group 70—Hotels, Rooming Houses, Camps, and Other Lodging Places

7011	Hotels, Motels, and Tourist Courts	\$3.5
7021	Rooming and Boarding Houses ..	\$3.5
7032	Sporting and Recreational Camps	\$3.5
7033	Trailer Parks and Camp Sites for Transients	\$3.5
7041	Organization Hotels, and Lodging Houses, on Membership Basis ..	\$3.5

Notes: Size standards preceded by a dollar sign (\$) are in millions of dollars. All others are in number of employees unless specified otherwise.
N.E.C.: Not Elsewhere Classified

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19.102

FEDERAL ACQUISITION REGULATION (FAR)

SIC	DESCRIPTION	SIZE
Major Group 72-Personal Services		
7211	Power Laundries, Family and Commercial.	\$7.0
7212	Garment Pressing, and Agents for Laundries and Dry Cleaners	\$3.5
7213	Linen Supply	\$7.0
7215	Coin-operated Laundries and Dry Cleaning	\$3.5
7216	Dry Cleaning Plants, Except Rug Cleaning	\$2.5
7217	Carpet and Upholstery Cleaning	\$2.5
7218	Industrial Launderers.....	\$7.0
7219	Laundry and Garment Services, N.E.C.	\$3.5
7221	Photographic Studios, Portrait.....	\$3.5
7231	Beauty Shops.....	\$3.5
7241	Barber Shops	\$3.5
7251	Shoe Repair Shops, Shoe Shine Parlors, and Hat Cleaning Shops.....	\$3.5
7261	Funeral Service and Crematories.....	\$3.5
7291	Tax Return Preparation Services.....	\$3.5
7299	Miscellaneous Personal Services.....	\$3.5
Major Group 73-Business Services		
7311	Advertising Agencies	\$3.5
7312	Outdoor Advertising Services	\$3.5
7313	Radio, Television, and Publishers' Advertising Representatives.....	\$3.5
7319	Advertising, N.E.C.	\$3.5
7322	Adjustment and Collection Services	\$3.5
7323	Credit Reporting	\$3.5
7331	Direct Mail Advertising Services	\$3.5
7334	Photocopying and Duplicating Services	\$3.5
7335	Commercial Photography.....	\$3.5
7336	Commercial Art and Graphic Design.....	\$3.5
7338	Stenographic and Court Reporting Services.....	\$3.5
7342	Disinfecting and Exterminating Services.....	\$3.5
7349	Building Maintenance Services, N.E.C.....	\$8.0
7352	Medical Equipment Rental.....	\$3.5
7353	Heavy Construction and Earthmoving Equipment Rental and Leasing.....	\$3.5
7359	Equipment Rental and Leasing, N.E.C.....	\$3.5
7361	Employment Agencies	\$3.5
7363	Help Supply Services	\$3.5
7371	Computer Programming Services.....	\$14.5
7372	Prepackaged Software	\$14.5
7373	Computer Integrated Systems Design.....	\$14.5
7374	Computer Processing and Data Preparation and Processing Services	\$14.5

SIC	DESCRIPTION	SIZE
7375	Information Retrieval Services.....	\$14.5
7376	Computer Facilities Management Services.....	\$14.5
7377	Computer Rental and Leasing	\$14.5
7378	Computer Maintenance and Repair.....	\$14.5
7379	Computer Related Services, N.E.C.	\$14.5
7381	Detective, Guard and Armored Car Services.....	\$6.0
7382	Security Systems Services	\$6.0
7383	News Syndicates.....	\$3.5
7384	Photofinishing Laboratories	\$3.5
7389	Business Services, N.E.C.	\$3.5
Major Group 75-Automotive Repair, Services, and Garages		
7513	Truck Rental and Leasing, Without Drivers	\$12.5
7514	Passenger Car Rental, Without Drivers	\$12.5
7515	Passenger Car Leasing, Without Drivers	\$12.5
7519	Utility Trailer and Recreational Vehicle Rental.....	\$3.5
7521	Automobile Parking.....	\$3.5
7532	Top, Body, and Upholstery Repair, and Paint Shops	\$3.5
7533	Motor Vehicle Exhaust Systems Repair Shops.....	\$3.5
7534	Tire Retreading and Repair Shops.....	\$7.0
7536	Motor Vehicle Glass Replacement Shops.....	\$3.5
7537	Motor Vehicle Transmission Repair Shops.....	\$3.5
7538	General Automotive Repair Shops.....	\$3.5
7539	Automotive Repair Shops, N.E.C.....	\$3.5
7542	Car Washes.....	\$3.5
7549	Automotive Services, Except Repair and car washes.....	\$3.5
Major Group 76-Miscellaneous Repair Services		
7622	Radio and Television Repair Shops	\$3.5
7623	Refrigeration and Air Conditioning Service and Repair Shops.....	\$3.5
7629	Electrical and Electronic Repair Shops, N.E.C.	\$3.5
7631	Watch, Clock, and Jewelry Repair.....	\$3.5
7641	Reupholstery and Furniture Repair	\$3.5
7692	Welding Repair.....	\$3.5
7694	Armature Rewinding Shops	\$3.5
7699	Repair Shops and Related Services, N.E.C. ¹⁸	\$3.5
Major Group 78-Motion Pictures		
7812	Motion Picture Production	\$14.5

Notes: Size standards preceded by a dollar sign (\$) are in millions of dollars. All others are in number of employees unless specified otherwise.

19-18 N.E.C.: Not Elsewhere Classified

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS 19.1003

if any, shall be distributed to both the SBA and the firm in accordance with the timeframes set forth in 4.201.

(c) To the extent consistent with the contracting activity's capability and resources, 8(a) contractors furnishing requirements shall be afforded ~~production~~ and technical assistance, including, when appropriate, identification of causes of deficiencies in their products and suggested corrective action to make such products acceptable.

(d) Section 407 of Public Law 100-656 requires that an 8(a) contract be terminated for convenience if the 8(a) concern to which it was awarded transfers ownership or control of the firm, unless the Administrator of the SBA, on a nondelegable basis, waives the requirement for contract termination. The Administrator may waive the termination requirement only if certain conditions exist. Moreover, a waiver of the statutory requirement for termination is permitted only if the 8(a) firm's request for waiver is made to the SBA prior to the actual relinquishment of ownership or control. The clauses in the contract entitled "Special 8(a) Contract Conditions" and "Special 8(a) Subcontract Conditions" require the SBA and the 8(a) subcontractor to notify the contracting officer when ownership of the firm is being transferred. When the contracting officer receives information that an 8(a) contractor is planning to transfer ownership or control to another firm, action must be taken immediately to preserve the option of waiving the termination requirement. The contracting officer should determine the timing of the proposed transfer and its effect on contract performance and mission support. If the contracting officer determines that the SBA does not intend to waive the termination requirement, and termination of the contract would severely impair attainment of the agency's program objectives or mission, the contracting officer should immediately notify the SBA in writing that the agency is requesting a waiver. Within 15 business days thereafter, or such longer period as agreed to by the agency and the SBA, the agency head shall either confirm or withdraw the request for waiver. Unless a waiver is approved by the SBA, the contracting officer shall terminate the contract for convenience upon receipt of a written request by the SBA. This statutory requirement for a convenience termination does not affect the Government's right to terminate for default if the cause for termination of an 8(a) contract is other than the transfer of ownership or control.

SUBPART 19.9—CONTRACTING OPPORTUNITIES FOR WOMEN-OWNED SMALL BUSINESSES

19.901 Policy.

In response to the need to aid and stimulate women's business enterprise, Executive Order 12138, May 18, 1979, directs agencies to take appropriate action to facilitate, preserve, and strengthen women's business enterprise and to ensure full participation by women in the free enterprise system. Appropriate action includes the award of subcontracts under Federal prime contracts.

19.902 Contract clause.

To encourage the use of women-owned small businesses in subcontracting, the contracting officer shall insert the clause at 52.219-13, Utilization of Women-Owned Small Businesses, in solicitations and contracts when the contract amount is expected to exceed the small purchase limitation, except-

(a) Contracts that, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands; or

(b) Contracts for personal services.

SUBPART 19.10—SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

19.1001 General.

The Small Business Competitiveness Demonstration Program was established by Title VII of the "Business Opportunity Development Reform Act of 1988," Pub. L. 100-656, and implemented by the OFPP Policy Directive and Test Plan, dated August 31, 1989. The program consists of two major components-

(a) A test of unrestricted competition in four designated industry groups; and

(b) A test of enhanced small business participation in 10 agency targeted industry categories. The program will be conducted over the period from January 1, 1989, through September 30, 1996. Pursuant to sec. 714(a) of Pub. L. 100-656, the requirements of the FAR that are inconsistent with the program procedures are waived.

19.1002 Definition.

"Emerging small business," as used in this subpart, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

19.1003 Purpose.

The purpose of the demonstration program is to-

(a) Test the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. This portion of the program is limited to the four designated industry groups listed in section 19.1005.

(b) Measure the extent to which awards are made to a new category of small businesses known as emerging small businesses (ESB's), and to provide for certain acquisitions to be reserved for ESB participation only. This portion of the program is also limited to the four designated industry groups listed in section 19.1005.

(c) Expand small business participation in 10 targeted industry categories through continued use of set-aside procedures, increased management attention, and specifically tailored acquisition procedures, as implemented through agency procedures.

19.1004

FEDERAL ACQUISITION REGULATION (FAR)

19.1004 Participating agencies.

The following agencies have been identified as participants in the demonstration program:

- The Department of Agriculture.
- The Department of Defense, except the Defense Mapping Agency.
- The Department of Energy.
- The Department of Health and Human Services.
- The Department of the Interior.
- The Department of Transportation.
- The Department of Veterans Affairs.
- The Environmental Protection Agency.
- The General Services Administration.
- The National Aeronautics and Space Administration.

19.1005 Applicability.**(a) Designated industry groups.**

(1) Construction under standard industrial classification (SIC) codes that comprise Major Groups 15, 16, and 17 (excluding dredging-Federal Procurement Data System (FPDS) service codes Y216 and 2216).

(2) Refuse systems and related services including portable sanitation services, under SIC code 4212 or 4953, limited to FPDS service code S205.

(3) Architectural and engineering services (including surveying and mapping) under SIC codes 7389, 8711, 8712, or 8713 (limited to FPDS service codes C111 through C216, C219, TO02, TO04, T008, TO09, T014, and R404).

(4) Nonnuclear ship repair (including overhauls and conversions) performed on nonnuclear propelled and nonpropelled ships under SIC code 3731, limited to FPDS service codes J998 (repair performed east of the 108th meridian) and J999 (repair performed west of the 108th meridian).

(b) Targeted industry categories. Each participating agency, in consultation with the Small Business Administration, shall designate its own targeted industry categories for enhanced small business participation,

(2) Agencies may reinstate the use of **small** business set-asides as necessary to meet prescribed goals.

(c) Emerging small business set-aside.

(1) All acquisitions in the four designated industry groups with an estimated value equal to or less than the emerging small business reserve amount established by the Office of Federal Procurement Policy shall be set aside for **ESB's**; *provided* that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible **ESB's** that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, the contracting officer shall-

(i) For acquisitions \$25,000 or less, proceed in accordance with 13.105 or Subpart 19.5; or

(ii) For acquisitions over \$25,000, proceed in accordance with paragraph (b) of this section.

(2) If the contracting officer proceeds with the ESB set-aside and receives a quotation from only one ESB at a reasonable price, the contracting officer shall make the award. If there is no quote from an ESB, or the quote is not at a reasonable price, then the contracting officer shall cancel the ESB set-aside and proceed in accordance with paragraph (c)(1) (i) or (ii) of this section.

(3) When using other than small purchase procedures for ESB set-asides, the clause at 52.219-14, Limitations on Subcontracting, shall be placed in all solicitations and resulting contracts.

(d) To expand small business participation in the targeted industry categories, each participating agency will develop and implement a time-phased strategy with incremental goals, including reporting on goal attainment. To the extent practicable, provisions that encourage and promote teaming and joint ventures shall be considered. These provisions should permit small business firms to effectively compete for contracts that individual small businesses would be ineligible to compete for because of lack of production capacity or capability.

19.1006 Procedures.**(a) General.**

(1) All solicitations shall include the applicable SIC code and size standards.

(2) The face of each award made pursuant to the program shall contain a statement that the award is being issued pursuant to the Small Business Competitiveness Demonstration Program.

(b) Designated industry groups.

(1) Solicitations for acquisitions in any of the four designated industry groups issued from January 1, 1989, through September 30, 1996, that have an anticipated dollar value greater than \$25,000 shall not be considered for small business set-asides under Subpart 19.5 (however, see subparagraphs (b)(2) and (c)(1) of this section). Acquisitions in the designated industry groups shall continue to be considered for placement under the 8(a) program (see Subpart 19.8).

19.1007 Solicitation provisions.

(a) The contracting officer shall insert in full text the provision at 52.219-19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, in all solicitations in the four designated industry groups.

(b) The contracting officer shall insert in full text the provision at 52.219-20, Notice of Emerging Small Business Set-Aside, in all solicitations for emerging small businesses in accordance with 19.1006(c).

(c) The contracting officer shall insert in full text the provision at 52.219-21, Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program, in all solicitations issued in each of the targeted industry categories under the Small Business Competitiveness Demonstration Program that are expected to result in a contract award in excess of \$25,000.

(b) Agencies making determinations under 25.102(a)(4) or 25.202(a)(3) for unlisted articles, materials, or supplies shall submit a copy of these determinations to the appropriate FAR Council for possible addition of items to the list.

(c) Agencies shall provide detailed information to the appropriate FAR Council if any item on the list becomes reasonably available in sufficient commercial quantities of a satisfactory quality.

(d)(1) The excepted articles, materials, and supplies are as follows:

Acetylene, black.

Agar, bulk.

Anise.

Antimony, as metal or oxide.

Asbestos, amosite, chrysotile, and crocidolite.

Bananas.

Bauxite.

Beef, corned, canned.

Beef extract.

Bephenium hydroxynapthoate.

Bismuth.

Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.

Brazil nuts, **unroasted**.

Cadmium, ores and flue dust.

Calcium cyanamide.

Capers.

Cashew nuts.

Castor beans and castor oil.

Chalk, English.

Chestnuts.

Chicle.

Chrome ore or **chromite**.

Cinchona bark.

Cobalt, in cathodes, rondelles, or other primary ore and metal forms.

Cocoa beans.

Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.

Coffee, raw or green bean.

Colchicine alkaloid, raw.

Copra.

Cork wood or bark and waste.

Cover glass, microscope slide.

Crane rail (85-pound per foot).

Cryolite, natural.

Dammar gum.

Diamonds, industrial, stones and abrasives.

Emetine, bulk.

Ergot, crude.

Erythrityl tetranitrate.

Fair linen, altar.

Fibers of the following types: abaca, abace, agave, coir,

flax, jute, jute burlaps, **palmyra**, and sisal.

Goat and kidskins.

Graphite, natural, **crystalline**, crucible grade.

Hand **file** sets (Swiss pattern).

Handsewing needles.

Hemp yarn.

Hog bristles for brushes.

Hyoscine, bulk.

Ipecac, root.

Iodine, crude.

Kaurigum.

Lac.

Leather, sheepskin, hair type.

Lavender oil.

Manganese.

Menthol, natural bulk.

Mica.

Microprocessor chips (brought onto a Government **construction** site as separate units for incorporation into building systems during construction or repair and alteration of real property).

Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.

Nitroguanidine (**also** known as picrite).

Nux vomica, crude.

Oiticica oil.

Olive oil.

Olives (green), pitted or unpitted, or stuffed, in **bulk**.

Opium, crude.

Oranges, mandarin, canned.

Petroleum, crude oil, unfinished oils, and finished products (see definitions of petroleum terms in subparagraph (d)(2) of this section).

Pine needle oil.

Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.

Pyrethrum flowers.

Quartz crystals.

Quebracho.

Quinidine.

Quinine.

Rabbit fur felt.

Radium salts, source and special nuclear materials.

Rosettes.

Rubber, crude and latex.

Rutile.

Santonin, crude.

Secretin.

Shellac.

Silk, raw and unmanufactured.

Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.

Spices and herbs, in bulk.

sugars, raw.

Swords and scabbards.

Talc, block, **steatite**.

Tantalum.

Tapioca flour and cassava.

Tartar, crude; **tartaric acid** and cream of tartar **in** bulk.

Tea in bulk.

Thread, metallic (gold).

Thyme oil.

Tin in bars, blocks, and pigs.

Triprolidine hydrochloride.

Tungsten.

Vanilla beans.

Venom, cobra.

Wax, camauaba.

Wiie glass

Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, **greenheart**, lignum vitae, mahogany, and teak.

Yarn, 50 Denier rayon.

(2) As used in subparagraph (d)(1) of this section, petroleum terms are defined as follows:

(i) "Crude oil" means crude petroleum, as it is produced at **the** wellhead, and liquids (under atmospheric conditions) **that** have been recovered from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir and **that** are not natural gas products.

(ii) "Finished products" means any one or more of **the** following petroleum oils, or a mixture or combination of **these** oils, to be used without further processing except blending by mechanical means:

(A) "Asphalt"—a solid or semi-solid **cementitious** material **that** (1) gradually liquefies when heated, (2) has bitumens as its predominating constituents, and (3) is obtained in refining crude oil.

(B) "Fuel oil"—a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, or residues.

(C) "**Gasoline**"—a refined petroleum distillate **that**, by its composition, is suitable for use as a carburant in internal combustion engine-s.

(D) "Jet fuel"—a refined petroleum distillate used to fuel jet propulsion engines.

(E) "Liquefied gases"—hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures.

(F) "Lubricating oil"—a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces.

(G) "Naphtha"—a refined petroleum distillate falling within a distillation range overlapping the

higher gasoline and the lower kerosenes.

(H) "Natural gas products"—liquids (under **atmospheric** conditions), including natural gasoline, **that**—

(1) Are recovered by a process of absorption, adsorption, compression, refrigeration, cycling, or a combination of **these** processes, from mixtures of hydrocarbons **that** existed in a vaporous phase in a reservoir, and

(2) When recovered and without processing in a refinery, definitions of products contained in **(d)(2)(ii)**, (B), (C), (D), and (G) of **this** section.

(I) "Residual fuel oil"—a topped crude oil or viscous residuum that, as obtained in refining or after blending **with other** fuel oil, meets or is the equivalent of Military Specification Mil-F-859 for Navy Special Fuel Oil and any more viscous fuel oil, **such** as No. 5 or Bunker C.

(iii) "Unfurnished oils" means one or more of the petroleum oils listed in subdivision (ii) of this section, or a mixture or combination of these oils, **that** are to be further processed **other than** by blending by mechanical means.

25.109 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert **the** provision at 52.225-1, Buy American Certificate, in solicitations where the clause at 52.225-3 is used.

(b) **When** quotations are obtained orally (see Part 13), vendors shall be informed that only domestic end products, other than end products excepted on a blanket or individual basis (see 25.108 and Subpart 25.4), shall be acceptable, unless the price for an offered domestic end product is unreasonable (see 25.105).

(c) The contracting officer shall insert the provision at 52.225-2, Waiver of Buy American Act for Civil Aircraft and Related Articles, in solicitations for the acquisition of civil aircraft and related articles.

(d) Except as provided in paragraph (g) of this section, or when the clause prescribed by paragraph (f) is used, or when the clause prescribed in 25.408(a)(4) is used, the contracting officer **shall** insert the clause at 52.225-3, Buy American Act-Supplies, in solicitations and contracts for **the** acquisition of supplies, or for services involving **the** furnishing of supplies, for use within the United States.

(e) The contracting officer shall insert the provision at 52.225-16, Buy American Act — Supplies under European Community Agreement Certificate, in solicitations where **the** clause at 52.225-17, Buy American Act — Supplies under European Community Agreement, is used.

(f) Except as provided in paragraph (g) of **this** section, the contracting officer shall **insert** the clause at 52.225-17, **Buy American Act-Supplies** under European Community Agreement, in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of **sup-**

forwarded to the District Director of Customs at port of entry) or Customs Form 7506, Warehouse Withdrawal Conditionally Free of Duty, and Permit (two copies to be forwarded to the District Director of Customs at warehouse location).

(2) Customs forms are available from any District Director of Customs Office or United States Customs port. Data for completing customs forms shall be obtained from the contractor.

(c) *Immediate entry and release.* Imported supplies purchased under Government contracts are regarded as shipments, the immediate delivery of which is necessary under the provisions of 19 U.S.C. 1448(b). Request for their release from Customs custody before formal entry and release shall normally be made by the contracting officer by filing Customs Form 3461, Immediate Delivery Application, with the District Director of Customs at port of entry. Forms for formal entry and release must be filed within a reasonable time thereafter. Applications for immediate delivery may be limited to particular shipments or may cover all shipments under a Government contract. They may be approved for specific or indefinite periods of time (see 19 CFR 10.101 and 19 CFR Part 142, Subpart A, for requirements).

25.604 Exempted supplies.

(a) Schedule 8 of the Tariff Schedules of the United States (19 U.S.C. 1202) lists supplies for which exemptions from duty may be obtained when imported into the customs territory of the United States under a Government contract. For certain of these supplies, the contracting agency must certify to the Commissioner of Customs that they are for the purpose stated in the Tariff Schedule (see 19 CFR 10.102-104, 10.110, 10.114-119, 10.121, and 15 CFR 301 for requirements and formats).

(b) Supplies (as opposed to equipment) for Government-operated vessels or aircraft may be withdrawn from any customs-bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone free of duty and internal revenue tax as provided in 19 U.S.C. 1309(a). The contracting activity shall cite this authority on the appropriate customs form when making such purchases (see 19 CFR 10.59(a)).

25.605 Contract clause.

(a) The contracting officer shall insert the clause at 52.225-10, Duty-Free Entry, in solicitations and contracts over \$100,000 that provide for, or anticipate furnishing to the Government, supplies to be imported into the customs territory of the United States.

(b) The clause may be used in solicitations and contracts of \$100,000 or less, if such action is consistent with, the policy in 25.602.

(c) If the contracting officer knows before award that the contract includes specific supplies that will be accorded

duty-free entry, a list of these supplies shall be inserted in the contract Schedule. The list shall include item numbers from Schedule 8, Tariff Schedules of, the United States, and a description of the supplies.

SUBPART 25.7—RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

25.701 Reserved.

25.702 Restrictions.

(a) The Government does not acquire supplies or services from foreign governments or their organizations when these supplies or services cannot be imported lawfully into the United States. Therefore, except as provided in 25.703(a), agencies and their contractors and subcontractors shall not acquire—

(1) Any supplies or services originating from sources within the communist areas of North Korea, Vietnam, Cambodia, or Cuba (31 CFR 500);

(2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba (31 CFR 515); or

(3) Arms, ammunition, or military vehicles produced in South Africa, or manufacturing data for such articles (22 U.S.C. 2778).

(b) Agencies and their contractors and subcontractors shall not acquire supplies or services originating from sources within Iraq, any supplies that are or were located in or transported from or through Iraq, or any supplies or services from entities controlled by the Government of Iraq (E.O. 12722 and 12724) (31 CFR 575). The effective date for Iraqi restrictions is August 2, 1990. Questions concerning these restrictions should be referred to the Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220 (Telephone No. (202) 622-2520).

25.703 Exceptions.

In unusual situations, supplies and services restricted by 25.702(a) may be acquired for use outside the United States, its possessions, or Puerto Rico. Examples of an unusual situation are an emergency or when the supplies or services are not available from another source and a substitute is not acceptable. The approval level for this exception is the contracting officer for small purchases, unless otherwise provided by the agency in the case, or the agency head for other than small purchases. A copy of the written approval shall be furnished to the contractor.

25.704 Contract clause.

The contracting officer shall insert the clause at 52.225-11, Restrictions on Certain Foreign Purchases, in solicitations and contracts.

**SUBPART 25.8—INTERNATIONAL AGREEMENTS
AND COORDINATION****25.801 International agreements.**

Treaties and agreements between **the** United States and foreign governments may affect contracting within foreign countries. Contracting officers **should** give particular attention to **the** provisions in **those** agreements **that** pertain to purchase procedures, contract forms and clauses, taxes, patents, technical information, facilities, and other matters related to contracting.

25.802 Procedures.

(a) **When** placing contracts **with** contractors outside **the** United States, for performance outside **the** United States, contracting **officers** shall-

(1) Determine the existence and applicability of any international agreements to contracts being planned or processed, and ensure compliance **with** these agreements; and

(2) **Conduct** the necessary advance acquisition planning and coordination between the appropriate United States executive agencies and foreign interests as required by these agreements.

(b) Many international agreements are compiled in the "United States Treaties and Other International Agreements" series published by the Department of State. Copies of **this** publication are normally available in overseas legal offices and United States diplomatic missions.

**SUBPART 25.9—ADDITIONAL FOREIGN
ACQUISITION CLAUSES****25.901 Omission of examination of records clause.**

(a) *Definition.* "Foreign contractor,*" as used in this subpart, means a contractor or subcontractor organized or existing under the laws of a country **other** than the United States, its territories, or possessions.

(b) *Policy.* As required by 10 U.S.C. 2313, 41 U.S.C. 254, and 15.106-1(b)(3), **the** contracting officer **shall** consider for use in negotiated contracts **with** foreign contractors, whenever possible, the clause at 52.215-1, Examination of Records by Comptroller General. Omission of the clause should be approved only after the contracting agency, having considered **such** factors as alternate sources of supply, additional cost, and time of delivery, has made all reasonable efforts to include **the** clause.

(c) *Conditions for omission.* (1) *The* contracting officer may omit **the** clause at 52.215-1, Examination of Records by Comptroller General, from contracts with foreign contractors-

(i) If the agency head determines, with the concurrence of **the** Comptroller General or a designee, the omission of the clause will serve **the** public interest; or

(ii) If the contractor is a foreign government or agency thereof or is precluded by the laws of **the** country involved **from** making its books, documents, papers, or records available for examination, and the agency head determines, after taking into account the price and availability of the property or services from domestic sources, that omission of the clause best serves **the** public interest.

(2) When a determination under subparagraph (c)(1)(ii) of **this** section is the basis for omission of the clause at 52.215-1, Examination of Records by Comptroller General, the agency head **shall** forward a written report to the Congress explaining the reasons for the determination; except that **this** requirement is not applicable to the Department of Defense.

(d) *Determination and findings.* **The** determination and findings shall-

(1) Identify the contract and its purpose, and **whether** it is a contract **with** a foreign contractor or **with** a foreign government or agency **thereof**;

(2) Describe the efforts to include the clause;

(3) State the reasons for **the** contractor's refusal to include the clause;

(4) **Describe** the price and availability of **the** property or services **from** the United States and **other** sources; and

(5) Determine that it will serve the interest of the United States to omit **the** clause.

25.902 Inconsistency between English version and translation of contract.

The contracting officer **shall** insert **the** clause at 52.225-14, Inconsistency Between English Version and Translation of Contract, in solicitations and contracts whenever **translation** into another language is anticipated.

**SUBPART 25.10—IMPLEMENTATION OF
SANCTIONS AGAINST COUNTRIES THAT
DISCRIMINATE AGAINST UNITED STATES
PRODUCTS OR SERVICES IN GOVERNMENT
PROCUREMENT****25.1000 Scope of subpart.**

This subpart implements section 305(d)(1) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(d)(1)), which requires **the** President to identify a country which discriminates against U.S. products or services in Government procurement and to impose sanctions on that country's products and services. This subpart does not apply to the Department of Defense.

25.1001 Definitions.

As used in **this** subpart—

"Sanctioned European Community (EC) construction" means construction to be performed in a sanctioned member state of **the** EC and the contract is awarded by a contracting activity located in **the** United States or its territories.

improvement in an existing product or service) for the purpose of meeting specific performance requirements or objectives. Development includes the functions of design engineering, prototyping, and engineering testing. Development excludes: (1) subcontracted technical effort which is for the sole purpose of developing an additional source for an existing product, or (2) development effort for manufacturing or production materials, systems, processes, methods, equipment, tools, and techniques not intended for sale.

“Independent research and development (IR&D),” as used in this subsection, means a contractor’s IR&D cost that consists of projects falling within the four following areas: (1) basic research, (2) applied research, (3) development, and (4) systems and other concept formulation studies. The term does not include the costs of effort sponsored by a grant or required in the performance of a contract. IR&D effort shall not include technical effort expended in developing and preparing technical data specifically to support submitting a bid or proposal.

“Major contractor,” as used in paragraph (c)(2) of this subsection, means any contractor whose covered segments allocated to covered contracts a total of more than \$10,000,000 in IR&D/B&P costs in the preceding fiscal year. For purposes of calculating the dollar threshold amounts to determine whether a contractor meets the definition of “major contractor,” contractor segments allocating less than \$1,000,000 of IR&D/B&P costs to covered contracts in the preceding year shall not be included.

“Systems and other concept formulation studies,” as used in this subsection, means analyses and study efforts either related to specific IR&D efforts or directed toward identifying desirable new systems, equipment or components, or modifications and improvements to existing systems, equipment, or components.

(b) *Composition and allocation of costs.* The requirements of 48 CFR 9904.420, Accounting for independent research and development costs and bid and proposal costs, are incorporated in their entirety and shall apply as follows—

(1) *Fully-CAS-covered contracts.* Contracts that are fully-CAS-covered shall be subject to all requirements of 48 CFR 9904.420.

(2) *Modified CAS-covered and non-CAS-covered contracts.* Contracts that are not CAS-covered or that contain terms or conditions requiring modified CAS coverage shall be subject to all requirements of 48 CFR 9904.420 except 48 CFR 9904.420-50(e)(2) and 48 CFR 9904.420-50(f)(2), which are not then applicable. However, non-CAS-covered or modified CAS-covered contracts awarded at a time the contractor has CAS-covered contracts requiring compliance with 48 CFR 9904.420, shall be subject to all the requirements of 48 CFR 9904.420. When the requirements of 48 CFR 9904.420-50(e)(2) and 48 CFR 9904.420-50(f)(2) are not applicable, the following apply:

(i) IR&D and B&P costs shall be allocated to final cost objectives on the same basis of allocation used for the G&A expense grouping of the profit center (see 31.001) in which the costs are incurred. However, when IR&D and B&P costs clearly benefit other profit centers or benefit the entire company, those costs shall be allocated through the G&A of the other profit centers or through the corporate G&A, as appropriate.

(ii) If allocations of IR&D or B&P through the G&A base do not provide equitable cost allocation, the contracting officer may approve use of a different base.

(c) *Allowability.* (1) This subparagraph (c)(1) implements section 824 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510). Except as provided in paragraphs (c)(2), (d), and (e) of this subsection, or as provided in agency regulations, costs for IR&D and B&P are allowable only in accordance with the following:

(i) *Companies required to negotiate advance agreements.* (A) Any company that received payments for IR&D and B&P costs in a fiscal year, either as a prime contractor or subcontractor, exceeding \$7,000,000 from Government agencies, is required to negotiate with the Government an advance agreement which establishes a ceiling for allowability of IR&D and B&P costs for the following fiscal year. This agreement is binding on all Government agencies, unless prohibited by statute. The requirements of section 203 of Public Law 91-441 necessitate that the Department of Defense (DOD) be the lead negotiating agency when the contractor has received more than \$7,000,000 in payments for IR&D and B&P from DOD. Computation of IR&D and B&P costs to determine whether the threshold criterion was reached shall include only recoverable IR&D and B&P costs allocated during the company’s previous fiscal year to prime contracts and subcontracts for which the submission and certification of cost or pricing data were required. (See also paragraph (b) of this subsection and 15.804.) The computation shall include full burdening pursuant to 48 CFR 9904.420.

(B) When a company meets the criterion in (c)(1)(i)(A) of this subsection, required advance agreements may be negotiated at the corporate level and/or with those profit centers that contract directly with the Government and that in the preceding year allocated recoverable IR&D and B&P costs exceeding \$700,000, including burdening, to contracts and subcontracts for which the submission and certification of cost or pricing data were required (see also paragraph (b) of this subsection and 15.804). When ceilings are negotiated for separate profit centers of the company, the allowa-

bility of **IR&D** and **B&P** costs for any center that in its previous fiscal year did not reach the \$700,000 threshold may be determined in accordance with paragraph (c)(1)(ii) of this subsection.

(C) Ceilings are the maximum dollar amounts of total **IR&D** and **B&P** costs that will be allowable for allocation over the appropriate base for that part of the company's operation covered by an advance agreement.

(D) No **IR&D** and **B&P** cost shall be allowable if a company fails to initiate negotiation of a required advance agreement before the end of the fiscal year for which the agreement is required.

(E) When negotiations are held with a company meeting the \$7,000,000 criterion or with separate profit centers (when negotiations are held at that level under (c)(1)(i)(B) of this subsection), and if no advance agreement is reached, payment for **IR&D** and **B&P** costs shall be reduced below that which the company or profit center would have otherwise received. The amount of such reduced payment shall not exceed 75 percent of the amount which, in the opinion of the contracting officer, the company or profit center would be entitled to receive under an advance agreement. Written notification of the contracting officer's determination of a reduced amount shall be provided the contractor. In the event that an advance agreement is not reached before the end of the contractor's fiscal year for which the agreement is to apply, negotiations shall immediately be terminated, and the contracting officer shall furnish a determination of the reduced amount.

(F) Contractors may appeal decisions of the contracting officer to reduce payment. The appeal shall be filed with the contracting officer within 30 days of receipt of the contracting officer's determination. (See also Subpart 42.10.)

(ii) *Companies not required to negotiate advance agreements.* Costs for **IR&D** and **B&P** are allowable as indirect expenses on contracts to the extent that those costs are allocable and reasonable.

(2) This subparagraph (c)(2) implements section 802 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102-190) and is effective for **IR&D** and **B&P** costs incurred by a contractor during fiscal years of that contractor that begin on or after October 1, 1992. Except as provided in paragraph (d) of this subsection, or as provided in agency regulations, costs for **IR&D** and **B&P** are allowable as indirect expenses on contracts to the extent that those costs are allocable and reasonable. The following limitations apply to major contractors-

(i) For the first three contractor fiscal years beginning on or after October 1, 1992, the total maximum allowable amount of **IR&D/B&P** costs shall not exceed the sum of:

(A) The total amount of allowable **IR&D/B&P** costs in the preceding fiscal year (*i.e.*, the lower of the previous year's ceiling or actual costs incurred); plus

(B) Five percent of the amount in (c)(2)(i)(A) of this subsection; plus

(C) If the total amount of **IR&D/B&P** costs for a fiscal year is greater than the total amount of **IR&D/B&P** costs for the preceding fiscal year, the amount that is determined by multiplying the amount in (c)(2)(i)(A) of this subsection by the lesser of-

(Z) The percentage by which the total amount of **IR&D/B&P** costs for a fiscal year exceeds the total amount of such costs for the preceding fiscal year; or

(2) The percentage rate of inflation from the end of the preceding fiscal year to the end of the fiscal year for which the amount of the limitation is being computed. The rate of inflation shall be the price escalation index for the Research, Development, Test & Evaluation (**RDT&E**) account, Total Obligation Authority (**TOA**) which is published annually (normally in January) by the Department of Defense Comptroller and used in preparation of the annual submission of the Defense budget. This rate will be published in *the Federal Register* on an annual basis.

(ii) Major contractors shall submit, in accordance with agency guidance; financial and technical information to support their **IR&D/B&P** costs.

(iii) A waiver may be granted, in accordance with agency procedures, to increase the amount prescribed in (c)(2)(i) of this subsection for the following special circumstances:

(A) To ensure that the contractor's allowable **IR&D/B&P** costs are at least the same amount that would have been allowed under this subpart which was in effect on December 4, 1991; or

(B) When it is in the best interest of the Government.

(d) *Deferred IR&D and B&P costs.* (1) **IR&D** costs that were incurred in previous accounting periods are unallowable, except when a contractor has developed a specific product at its own risk in anticipation of recovering the development costs in the sale price of the product provided that-

(i) The total amount of **IR&D** costs applicable to the product can be identified;

(ii) The proration of such costs to sales of the product is reasonable;

(vi) Property taxes and operating or maintenance costs.

(3) Continuing mortgage principal payments on residence being sold.

(4) Payments for employee income or FICA (social security) taxes incident to reimbursed relocation costs.

(5) Payments for job counseling and placement assistance to employee spouses and dependents who were not employees of the contractor at the old location.

(6) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.

(d) If relocation costs for an employee have been allowed either as an allocable indirect or direct cost, and the employee resigns within 12 months for reasons within the employee's control, the contractor shall refund or credit the relocation costs to the Government.

(e) Subject to the requirements of paragraphs (a) through (d) above, the costs of family movements and of personnel movements of a special or mass nature are allowable. The cost, however, should be assigned on the basis of work (contracts) or time period benefited.

(f) Relocation costs (both outgoing and return) of employees who are hired for performance on specific contracts or long-term field projects are allowable if-

(1) The term of employment is not less than 12 months;

(2) The employment agreement specifically limits the duration of employment to the time spent on the contract or field project for which the employee is hired;

(3) The employment agreement provides for return relocation to the employee's permanent and principal home immediately prior to the outgoing relocation, or other location of equal or lesser cost; and

(4) The relocation costs are determined under the rules of paragraphs (a) through (d) above. However, the costs to return employees, who are released from employment upon completion of field assignments pursuant to their employment agreements, are not subject to the refund or credit requirement of paragraph (d).

31.205-36 Rental costs.

(a) This subsection is applicable to the cost of renting or leasing real or personal property, except ADPE (see 31.205-2), acquired under "operating leases" as defined in Statement of Financial Accounting Standards No. 13 (FAS-13), Accounting for Leases. Compliance with 31.205-11(m) requires that assets acquired by means of capital leases, as defined in FAS-13, shall be treated as purchased assets; i.e., be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges, or over the lease term as amortization charges, as appropriate (but see subparagraph (b)(4) below).

(b) The following costs are allowable:

(1) Rental costs under operating leases, to the extent that the rates are reasonable at the time of the lease decision, after consideration of (i) rental costs of comparable property, if any; (ii) market conditions in the area; (iii) the type, life expectancy, condition, and value of the property leased; (iv) alternatives available; and (v) other provisions of the agreement.

(2) Rental costs under a sale and leaseback arrangement only up to the amount the contractor would be allowed if the contractor retained title.

(3) Charges in the nature of rent for property between any divisions, subsidiaries, or organizations under common control, to the extent that they do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money, and maintenance (excluding interest or other unallowable costs pursuant to Part 31), provided that no part of such costs shall duplicate any other allowed cost. Rental cost of personal property leased from any division, subsidiary, or affiliate of the contractor under common control, that has an established practice of leasing the same or similar property to unaffiliated lessees shall be allowed in accordance with subparagraph (b)(1) above.

(4) Rental costs under leases entered into before March 1, 1970 for the remaining term of the lease (excluding options not exercised before March 1, 1970) to the extent they would have been allowable under Defense Acquisition Regulation (formerly ASPR) 15-205.34 or Federal Procurement Regulations section 1-15.205-34 in effect January 1, 1969.

(c) The allowability of rental costs under unexpired leases in connection with terminations is treated in 31.205-42(e).

31.205-37 Royalties and other costs for use of patents.

(a) Royalties on a patent or amortization of the cost of purchasing a patent or patent rights necessary for the proper performance of the contract and applicable to contract products or processes are allowable unless-

(1) The Government has a license or the right to a free use of the patent;

(2) The patent has been adjudicated to be invalid, or has been administratively determined to be invalid;

(3) The patent is considered to be unenforceable; or

(4) The patent is expired.

(b) Care should be exercised in determining reasonableness when the royalties may have been arrived at as a result of less-than-arm's-length bargaining; e.g., royalties-

(1) Paid to persons, including corporations, affiliated with the contractor;

(2) Paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government contract would be awarded; or

(3) Paid under an agreement entered into after the contract award.

(c) In any case involving a patent formerly owned by the contractor, the royalty amount allowed should not exceed the cost which would have been allowed had the contractor retained title.

(d) See 31.109 regarding advance agreements.

31.205-38 Selling costs.

(a) "Selling" is a generic term encompassing all efforts to market the contractor's **products** or services, some of which are covered specifically in other subsections of 31.205. Selling activity includes the following broad categories:

- (1) Advertising.
- (2) Corporate image enhancement including broadly-targeted sales efforts, **other** than advertising.
- (3) Bid and proposal costs.
- (4) Market planning.
- (5) Direct selling.

(b) Advertising costs are defined at 31.205-1(b) and are subject to the **allowability** provisions of 31.205-1(d) and (f). Corporate image enhancement activities are included within the definitions of public relations at 31.205-1(a) and **entertainment** at 31.205-14 and are subject to the allowability provisions at 31.205-1(e) and (f) and 31.205-14, respectively. Bid and proposal costs are defined at 31.205-18 and have their allowability controlled by that subsection. Market planning involves market research and analysis and generalized management planning concerned with development of the contractor's business. The allowability of long-range market planning costs is controlled by the provisions of 31.205-12. Other market planning costs are allowable to the extent that they are reasonable and not in excess of the limitations of subparagraph (c)(2) of this subsection. Costs of activities which are correctly classified and disallowed under cost principles referenced in this paragraph (b) are not to be reconsidered for reimbursement under any other provision of this subsection.

(c)(1) Direct selling efforts are those acts or actions to induce particular customers to purchase particular products or services of the contractor. Direct selling is characterized by person-to-person contact and includes such activities as familiarizing a potential customer with the contractor's products or services, conditions of sale, service capabilities, etc. It also includes negotiation, liaison between customer and contractor personnel, technical and consulting activities, individual demonstrations, and any other activities having as **their** purpose the application or adaptation of the contractor's products or services for a particular customer's use. The cost of direct selling efforts is allowable if reasonable in amount.

(2) The costs of broadly targeted and direct selling efforts and market planning other than long-range, which are incurred in connection with a significant effort to promote export sales of products normally sold to the U.S. Government, including the costs of **exhibit-**

ing and demonstrating such products, are allowable on contracts with the U.S. Government provided-

(i) The costs are allocable, reasonable, and otherwise allowable under this subpart 31.2;

(ii) That, with respect to a business segment which allocates to U.S. Government contracts **\$2,500,000** or more of such costs in a given fiscal year of such business segment, a ceiling on allowable costs shall apply. The ceiling on the amount of allowable costs to be allocated over the appropriate base shall be 110 percent of foreign selling costs incurred by the business segment in the previous year; and

(iii) That, in order to comply with Public Law 100-456, the substance of this subparagraph (c)(2) shall also apply to all contracts and subcontracts of the contractor with the Department of Defense being performed by **the** contractor on the first day of the contractor's first full fiscal year that begins on or after December 15, 1988, whether or not a contract or subcontract contains this subparagraph (c)(2).

(d) The costs of any selling efforts other than those addressed in paragraphs (b) or (c) of this subsection are unallowable.

(e) Costs of the **type** identified in paragraphs (b), (c), and (d) of this subsection are often commingled on the **contractor's** books in the selling expense account because these activities are performed by the sales departments. However, identification and segregation of unallowable costs is required under the provisions of 31.201-6 and 30.405, and such costs are not allowable merely because they are **incurred** in connection with allowable selling activities.

(f) Notwithstanding any other provision of this subsection, sellers' or agents' compensation, fees, commissions, percentages, retainer or brokerage fees, whether or not contingent upon the award of contracts, are allowable only when paid to bona fide employees or established commercial or selling agencies maintained by the **contractor** for the purpose of securing business (see 3.408-2).

31.205-39 Service and warranty costs.

service and warranty **costs** include those arising from fulfillment of any contractual obligation of a contractor to **provide** services such as installation, **training, correcting** defects in the products, replacing defective parts, and making refunds in the case of inadequate performance. When **not** inconsistent with the terms of the contract, such service and warranty costs are allowable. However, care should be exercised to avoid duplication of the allowance as an element of both estimated product cost and risk.

31.205-40 Special tooling and special test equipment costs.

(a) The terms "special tooling" and "special test equipment" are defined in 45.101.

obligations to the assignee have been satisfied and a balance remains due under the contract.

(2) The assignee, under a **further** assignment or reassignment, in order to establish a right to receive payment from the Government, must file with the addressees listed in 32.802(e) a-

(i) Written notice of release of the contractor by the assigning financing **institution**;

(ii) Copy of the release **instrument**;

(iii) Written notice of the further assignment or reassignment; and

(iv) Copy of the **further** assignment or reassignment instrument.

(3) If the assignee releases the contractor from an assignment of claims under a contract, **the** contractor, in order to establish a right to receive payment of the balance due under the contract, must file a written notice of release together **with** a true copy of the release of assignment instrument with **the** addressees noted in 32.802(e).

(4) The addressee of a notice of release of assignment or the official acting on behalf of that addressee shall acknowledge receipt of the notice.

32.806 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.232-23, Assignment of **Claims**, in solicitations and contracts when **the** contract amount is expected to be \$1,000 or more, unless the contract will prohibit the assignment of claims (see 32.803(b)). The use of this clause is not required for purchase orders. However, the clause may be used in purchase orders for \$1,000 or more that are accepted in writing by the contractor, if such use is consistent with agency policies and regulations.

(2) If a no-setoff commitment is to be included in the contract (see 32.801 and 32.803(d)) and the contract is expected to be for \$1,000 or more, the contracting officer shall use the clause with its Alternate I.

(b) The contracting officer shall insert the clause at 52.232-24, Prohibition of Assignment of Claims, in solicitations and contracts for which a determination has been made under agency regulations that the prohibition of assignment of claims is in the Government's interest.

SUBPART 32.9—PROMPT PAYMENT

32.900 Scope of subpart.

This subpart prescribes policies, procedures, and clauses for implementing Office of Management and Budget (OMB) Circular A-125, 'Prompt Payment.'

32.901 Applicability.

This subpart applies to all Government contracts (including small purchases as defined in Subpart 13.1), except contracts with payment terms and late payment

penalties established by other governmental authority (e.g., tariffs).

32.902 Definitions.

"Contract financing payment,*" as used in this **subpart**, means a Government disbursement of monies to a contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government. Contract financing payments include advance payments, progress payments based on cost under the clause at 52.232-16, Progress Payments, progress payments based on a percentage or stage of completion (see 32.102(e)(1)) other than those made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts or the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, and interim payments on cost-type contracts. Contract financing payments do not include invoice payments or payments for partial deliveries.

"Day," as used in this subpart, means calendar day, unless otherwise indicated.

"Designated billing office," as used in this subpart, means the office or person designated in the contract where the contractor **first** submits invoices and contract financing requests. This might be the Government disbursing **office**, contract administration office, office accepting the supplies delivered or services performed by the contractor, contract audit office, or a nongovernmental agent. In some cases, different offices might be designated to receive invoices and contract financing requests.

"Designated payment office" means the place designated in the contract to make invoice payments or contract financing payments. Normally, this will be the Government disbursing office.

"Discount for prompt payment" means an invoice payment reduction voluntarily offered by the contractor, in conjunction with the clause at 52.232-8, Discounts for Prompt Payment, if payment is made by the Government prior to the due date. The due date is calculated from the date of the contractor's invoice.

"Due date" means **the** date on which payment should be made.

"Invoice payment," as used in this subpart, means a Government disbursement of monies to a contractor under a contract or other authorization for supplies or services accepted by the Government. This includes payments for partial deliveries that have been accepted by the Government and final cost or fee payments where amounts owed have been settled between the Government and the contractor. For purposes of this subpart invoice payments also include all payments made under **the** clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, and the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts. Invoice payments do not include contract financing payments.

“Payment date” means the date on which a check for payment is dated or an electronic funds transfer is made.

“Proper invoice” means a bill or written request for payment which meets the minimum standards **specified** in the clause at 52.232-25, Prompt Payment, 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, or 52.232-27, Prompt Payment for Construction Contracts (also see 32.905(e)), and other terms and conditions contained in the contract for invoice submission.

“Receiving report” means written evidence meeting the requirements of 32.905(f) which indicates Government acceptance of supplies delivered or services performed by the contractor (see Subpart 46.6).

32.903 Policy.

All solicitations and contracts subject to this subpart shall specify payment procedures, payment due dates, and interest penalties for late invoice payment. Invoice payments and contract financing payments will be made by the Government as close as possible to (or earlier as determined by the Agency head to be necessary on a case-by-case basis), but not later **than** the due dates specified in the contract by incorporation of the clauses at 52.232-25, Prompt Payment, 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, or 52.232-27, Prompt Payment for Construction Contracts. Payment will be based on receipt of a proper invoice or contract financing request and satisfactory contract performance. Agency procedures shall ensure that, when specifying due dates, full consideration is given to **the** time reasonably required by Government officials to fulfill their administrative responsibilities under the contract. Checks will be mailed and electronic funds transfers will be transmitted on or about the same day the payment action is dated. When appropriate, Government contracts should allow the contractor to be paid for partial deliveries that have been accepted by the Government (see 32.102(d)). Discounts for prompt payment offered by the contractor shall be taken only when payments are made within the discount period specified by the contractor. Agencies shall pay an interest penalty, **without** request from the contractor, for late invoice payments or improperly taken discounts for prompt payment. The interest penalty shall be absorbed within funds available for administration or operation of the program for which the penalty was incurred. The temporary unavailability of funds to make a timely payment does not relieve the obligation to pay interest penalties. For contracts awarded after October 1, 1989, if the interest penalty is not paid within 10 days after it is due and the contractor makes a written demand for payment within 40 days after payment of the principal amount due, agencies shall pay an additional penalty amount, which shall be calculated in accordance with regulations issued by **the** Office of Management and Budget.

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32.904 Responsibilities.

Agency heads shall establish the policies and procedures necessary to implement this subpart. Agency heads are authorized to prescribe additional standards for establishing due dates on invoice payments (32.905) and contract **financing** payments (32.906), as deemed necessary to support agency programs and foster prompt payment to contractors. Agency heads may also adopt different payment procedures in order to accommodate unique circumstances, provided that such procedures are consistent with **the policies** set forth in this subpart.

32.905 Invoice payments.

(a) Except as prescribed in 32.905(b), 32.905(c), and 32.905(d), the due date for making an invoice payment by the designated payment office shall be:

(1) The 30th day after the designated billing **office** has received a proper invoice from the contractor; or the 30th day after Government acceptance of supplies delivered or services performed by the contractor, whichever is later.

(i) On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) For the sole purpose of computing an interest penalty that might be due the contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day after the contractor has delivered supplies or performed services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or contractor compliance with a contract requirement. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities. Except in the case of a contract for the procurement of a brand name commercial item for authorized resale (e.g., commissary items), the contracting officer may specify a longer period for constructive acceptance in the solicitation and resulting contract, if required to afford the Government a reasonable opportunity to inspect and test the property furnished or to evaluate the services performed. The contract file **shall** indicate the justification for extending the constructive acceptance period beyond 7 days.

FAC 90-20 MARCH 10, 1994

PART 33

PROTESTS, DISPUTES, AND APPEALS

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GSBCA may establish, the agency shall file with the GSBCA and all **other** parties a protest tile. Except where **the** agency determines under appropriate authority to withhold classified or privileged information or information that would give a competitive advantage, the **protest** file shall include the following:

- (1) A contracting officer's decision, if any.
- (2) The contract, if any.
- (3) All relevant correspondence.
- (4) **Affidavits** or statements of witnesses on the matter under protest.
- (5) All documents relied upon by the contracting officer in taking the action protested
- (6) A copy of the solicitation, the protestor's bid or proposal and, if bid opening has occurred and no **contract** has been awarded, a copy of any relevant bids and the bid abstract

(7) In a negotiated acquisition, a copy of offers or proposals being considered for award and relevant to the protest should **be** included in the GSBCA file only, for *in camera* review by the Board. The agency shall serve all parties with a list of documents provided to the Board *in camera* review.

(8) Any additional existing evidence or information, necessary to determine the merits of the protest.

(9) Any information otherwise withheld, where it is appropriate for *in camera* review by the Board.

(c) The GSBCA procedures state that within 15 work days after the filing of the protest, or such longer time as the Board may establish, the agency shall submit its answer to the Board setting forth its defenses to the protest and its findings, actions, and recommendations in the matter.

(d)(1) If a protest contains a timely request for a suspension of procurement authority, a hearing will be held whenever practicable but not later than 10 calendar days after **the** filing of the protest. The Board shall suspend the procurement authority unless the agency establishes that-

- (i) Absent suspension, the contract award is likely within 30 calendar days; and
- (ii) Urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision.

(2) Circumstances in (d)(1) above shall be established by a D&F executed by the agency head or designee.

(3) The Board's decision on suspension may be oral.

(e) A hearing on the merits, if requested, will be held within 25 work days after the filing of the protest and a GSBCA decision on the merits will be issued within 45 work days, unless the Board's chairman determines a longer period is required.

(f)(1) The GSBCA may declare an appropriate interested party to be entitled to the costs of-

- (i) Filing and pursuing the protest, including reasonable attorney's fees; and

(ii) Bid and proposal preparation.

(2) Costs awarded under subparagraph (f)(1) of this section shall be paid out in accordance with the procedures provided in 31 U.S.C. 1304 (the Permanent Indefinite Judgment Fund).

(g) The **GSBCA's final** decision may be appealed by the agency or by any interested party, including any intervening interested parties, as set forth in Subpart 33.2.

33.106 Solicitation provision and contract clause.

(a) The contracting **officer** shall insert the provision at 52.233-2, Service of Protest, in solicitations for other than small purchases.

(b) The contracting officer shall insert the clause at 52.233-3, Protest After Award, in all solicitations and contracts. If a cost reimbursement contract is contemplated, the contracting officer shall use the clause with its *Alternate I*.

SUBPART 33.2—DISPUTES AND APPEALS

33.201 Definitions.

"Alternative means of dispute resolution (ADR)" means any procedure or combination of **procédures** voluntarily used to resolve issues in controversy without the need to resort to litigation. **These** procedures include, but are not limited to, assisted settlement negotiations, conciliation, facilitation, mediation, fact finding, minitrials, and arbitration.

"Claim," as used in this part, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$50,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act and 33.207. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in **33.206(a)**, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

"Defective certification," as used in this subpart, means a certificate which alters or otherwise deviates from the language in 33.207(c) or which is not executed by a person duly authorized to bind the contractor with respect to the claim. Failure to certify shall not be deemed to be a defective certification.

"Issue in **controversy**" means a material disagreement between the Government and the contractor which (1) may result in a claim or (2) is all or part of an existing claim.

"Misrepresentation of fact," as used in this part, means a

false statement of substantive fact, or any conduct which leads to the belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

“Neutral person,” as used in this subpart, means an impartial third party, who serves as a mediator, fact finder, or arbitrator, or otherwise functions to assist the parties to resolve the issues in controversy. A neutral person may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties. A neutral person shall have no official, financial, or personal **conflict** of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral person may serve (5 U.S.C. 583).

33.202 Contract Disputes Act of 1978.

The Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613) (the Act), establishes procedures and requirements for asserting and resolving claims subject to the Act. In addition, the Act provides for: (a) the payment of interest on contractor claims; (b) certification of contractor claims; and (c) a civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact.

33.203 Applicability.

(a) Except as specified in paragraph (b) below, this part applies to any express or implied contract covered by the Federal Acquisition Regulation.

(b) This subpart does not apply to any contract with (1) a foreign government or agency of that government, or (2) an international organization or a subsidiary body of that organization, if the agency head determines that the application of the Act to the contract would not be in the public interest.

(c) This part applies to all disputes with respect to contracting officer decisions on matters “arising under” or “relating to” a contract. Agency Boards of Contract Appeals (BCA’s) authorized under the Act continue to have all of the authority they possessed before the Act with respect to disputes arising under a contract, as well as authority to decide disputes relating to a contract. The clause at 52.233-1, Disputes, recognizes the “all disputes” authority established by the Act and states certain requirements and limitations of the Act for the guidance of contractors and contracting agencies. The clause is not intended to affect the rights and obligations of the parties as provided by the Act or to constrain the authority of the statutory agency BCA’s in the handling and deciding of contractor appeals under the Act.

33.204 Policy.

The Government’s policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer’s level. Reasonable efforts should be made

to resolve **controversies** prior to the submission of a claim. Agencies are encouraged to use ADR procedures to the maximum extent practicable. Certain factors, however, may make the use of ADR inappropriate (see 5 U.S.C. 572(b)). Except for arbitration conducted pursuant to the Administrative Dispute Resolution Act (ADRA), Pub. L. 100-522, agencies have authority which is separate from that provided by the ADRA to **use** ADR procedures to resolve issues in controversy. Agencies may also elect to proceed under the authority and requirements of the ADRA.

33.205 Relationship of the Act to Public Law 85-804.

(a) Requests for relief under Public Law 85-804 (50 U.S.C. 1431-1435) are not claims within the Contract Disputes Act of 1978 or the Disputes clause at 52.233-1, Disputes, and shall be processed under Part 50, Extraordinary Contractual Actions. However, relief formerly available only under Public Law 85-804; i.e., legal entitlement to rescission or reformation for mutual mistake, is now available within the authority of the contracting officer under the Contract Disputes Act of 1978 and the Disputes clause. In case of a question whether the contracting officer has authority to settle or decide specific types of claims, the contracting officer should seek legal advice.

(b) A contractor’s allegation that it is entitled to rescission or reformation of its contract in order to correct or mitigate the effect of a mistake shall be treated as a claim under the Act. A contract may be reformed or rescinded by the contracting officer if the contractor would be entitled to such remedy or relief under the law of Federal contracts. Due to the complex legal issues likely to be associated with allegations of legal entitlement, contracting officers shall make written decisions, prepared with the advice and assistance of legal counsel, either granting or denying relief in whole or in part.

(c) A claim that is either denied or not approved in its entirety under paragraph (b) above may be cognizable as a request for relief under Public Law 85-804 as implemented by Part 50. However, the claim must first be submitted to the contracting officer for consideration under the Contract Disputes Act of 1978 because the claim is not cognizable under Public Law 85-804, as implemented by Part 50, unless other legal authority in the agency concerned is determined to be lacking or inadequate.

33.206 Initiation of a claim.

(a) Contractor claims shall be submitted in writing to the contracting officer for a decision. The contracting officer shall document the **contract file** with evidence of the date of receipt of any submission from the contractor deemed to be a claim by the contracting officer.

(b) The contracting officer shall issue a written decision on any Government claim initiated against a contractor.

33.207 Contractor certification.

(a) Contractors shall provide the certification specified in 33.207(c) when submitting any **claim**—

- (1) Exceeding \$50,000; or
- (2) Regardless of the amount **claimed** when using—
 - (i) Arbitration conducted pursuant to 5 U.S.C. 575-580; or
 - (ii) Any other ADR technique that the agency elects to handle in accordance with the ADRA

(b) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(c) The certification shall state as follows: “I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the contractor.”

(d) The aggregate amount of both the increased and **decreased costs shall be used in determining when the dollar thresholds requiring certification are met** (see example in 15.804-2(a)(1)(ii) regarding cost or pricing data).

(e) The certification may be executed by any person duly authorized to bind the contractor with respect to the claim.

(f) A defective certification shall not deprive a court or an agency BCA of jurisdiction over that claim. Prior to the entry of a final judgment by a court or a decision by an agency BCA, however, the court or agency BCA shall require a defective certification to be corrected.

33.208 Interest on claims.

(a) The Government shall pay interest on a contractor’s claim on the amount found due and unpaid from the date that—

- (1) The contracting **officer** receives the claim (**certified** if required by 33.207(a)); or
- (2) Payment otherwise would be due, if that date is later, until the date of payment.

(b) Simple interest on claims shall be paid at the rate, **fixed** by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the contracting officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the **pendency** of the claim. (See 32.614 for the right of the Government to collect interest on its claims against a contractor.)

(c) With regard to claims having defective certifications, as defined in 33.201, interest shall be paid from **either** the date that the contracting officer initially receives the claim or October 29, 1992, whichever is later. However, if a contractor has provided a proper certificate prior to October 29, 1992, after submission of a defective certificate, interest shall be paid from the date of receipt by the Government of a proper certificate.

33.209 Suspected fraudulent claims.

If the contractor is unable to support any part of the

claim and there is evidence that the inability is attributable to misrepresentation of fact or to fraud on the part of the contractor, the contracting officer shall refer the matter to the agency official responsible for investigating fraud.

33.210 Contracting officer’s authority.

Except as provided in **this** section, contracting officers are authorized, within any specific limitations of their warrants, to decide or resolve all claims arising under or relating to a contract subject to the Act. In accordance with agency policies and 33.214, contracting officers are authorized to use ADR procedures to resolve claims. The authority to decide or resolve claims does not extend to—

(a) A claim or dispute for penalties or forfeitures prescribed by statute or regulation that another Federal agency is specifically authorized to administer, settle, or determine; or

(b) The settlement, compromise, payment, or adjustment of any claim involving fraud.

33.211 Contracting officer’s decision.

(a) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer **shall**—

- (1) Review the facts pertinent to **the** claim;
- (2) Secure **assistance** from legal and other advisors;
- (3) Coordinate with the contract administration **office** or contracting office, as appropriate; and
- (4) Prepare a written decision that shall include a—
 - (i) Description of the claim or dispute;
 - (ii) Reference to the pertinent contract terms;
 - (iii) Statement of the factual areas of agreement and disagreement;
 - (iv) Statement of the contracting officer’s decision, with supporting rationale;
 - (v) Paragraph substantially as follows:

“This is the **final** decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. **The** notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the boards small claim procedure for claims of \$10,000 or less or its accelerated procedure for claims of \$50,000 or less. Instead of appealing to the agency board of contract appeals, you may bring an action **directly** in the United States Court of Federal Claims (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. 603, regarding Maritime Contracts) within 12 months of the date you receive this decision”; and

- (vi) Demand for payment prepared in accordance with 32.610(b) in all cases where the decision results

in a finding that the contractor is indebted to the Government

(b) The contracting officer shall furnish a copy of the decision to the contractor by certified mail, return receipt requested; or by any other method that provides evidence of receipt. This requirement shall apply to decisions on claims initiated by or against the contractor.

(c) The contracting officer shall issue the decision within the following statutory time limitations:

(1) For claims of \$50,000 or less, 60 days after receiving a written request from the contractor that a decision be rendered within that period, or within a reasonable time after receipt of the claim if the contractor does not make such a request.

(2) For claims over \$50,000, 60 days after receiving a certified claim; provided, however, that if a decision will not be issued within 60 days, the contracting officer shall notify the contractor, within that period, of the time within which a decision will be issued.

(d) The contracting officer shall issue a decision within a reasonable time, taking into account—

(1) The size and complexity of the claim;

(2) The adequacy of the contractor's supporting data; and

(3) Any other relevant factors.

(e) The contracting officer shall have no obligation to render a final decision on any claim exceeding \$50,000 which contains a defective certification, if within 60 days after receipt of the claim, the contracting officer notifies the contractor, in writing, of the reasons why any attempted certification was found to be defective.

(f) In the event of undue delay by the contracting officer in rendering a decision on a claim, the contractor may request the agency BCA to direct the contracting officer to issue a decision in a specified time period determined by the BCA.

(g) Any failure of the contracting officer to issue a decision within the required time periods will be deemed a decision by the contracting officer denying the claim and will authorize the contractor to file an appeal or suit on the claim.

(h) The amount determined payable under the decision, less any portion already paid, should be paid, if otherwise proper, without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party.

33.212 Contracting officer's duties upon appeal.

To the extent permitted by any agency procedures controlling contacts with agency BCA personnel, the contracting officer shall provide data, documentation, information, and support as may be required by the agency BCA for use on a pending appeal from the contracting officer's decision.

33.213 Obligation to continue performance.

(a) In general, before passage of the Act, the obligation

to continue performance applied only to claims arising under a contract. However, Section 6(b) of the Act authorizes agencies to require a contractor to continue contract performance in accordance with the contracting officer's decision pending final decision on a claim relating to the contract. In recognition of this fact, an alternate paragraph is provided for paragraph (h) of the clause at 52.233-1, Disputes. This paragraph shall be used only as authorized by agency procedures.

(b) In all contracts that include the clause at 52.233-1, Disputes, with its Alternate I, in the event of a dispute not arising under, but relating to, the contract, the contracting officer shall consider providing, through appropriate agency procedures, financing of the continued performance; provided, that the Government's interest is properly secured.

33.214 Alternative dispute resolution (ADR).

(a) The objective of using ADR procedures is to increase the opportunity for relatively inexpensive and expeditious resolution of issues in controversy. Essential elements of ADR include—

(1) Existence of an issue in controversy;

(2) A voluntary election by both parties to participate in the ADR process;

(3) An agreement on alternative procedures and terms to be used in lieu of formal litigation;

(4) Participation in the process by officials of both parties who have the authority to resolve the issue in controversy; and

(5) Certification by the contractor in accordance with 33.207 when using ADR procedures to resolve all or part of a claim under the authority of the ADRA.

(b) ADR procedures may be used at any time that the contracting officer has authority to resolve the issue in controversy. If a claim has been submitted, ADR procedures may be applied to all or a portion of the claim. When ADR procedures are used subsequent to the issuance of a contracting officer's final decision, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the contracting officer's final decision and does not constitute a reconsideration of the final decision.

(c) When appropriate, a neutral person may be used to facilitate resolution of the issue in controversy using the procedures chosen by the parties.

(d) The confidentiality of ADR proceedings shall be protected consistent with 5 U.S.C. 574.

33.215 Contract clause.

The contracting officer shall insert the clause at 52.233-1, Disputes, in solicitations and contracts, unless the conditions in 33.203(b) apply. If it is determined under agency procedures that continued performance is necessary pending resolution of any claim arising under or relating to the contract, the contracting officer shall use the clause with its Alternate I.

PART 42—CONTRACT ADMINISTRATION

42.302

CAS administration only. Instructions for marking and distributing these contracts are provided in 4.201(c).

(b) Contracting offices or CAO's may request supporting contract administration under 42.204 for contracts for which they have contract administration responsibility. However, if a substantial proportion of the normal contract administration functions listed in 42.302(a) are to be requested, an official above the contracting officer's level shall review the validity of retaining administration while requesting extensive supporting contract administration

42.204 Supporting contract administration.

(a) A CAO assigned a contract for administration under 42.202 or a contracting office retaining administration under 42.203 may request supporting contract administration from the CAO cognizant of the contractor location where performance of specific contract administration functions is required. The request shall (1) be in writing, (2) clearly state the specific functions to be performed, and (3) be accompanied by a copy of pertinent contractual and other necessary documents.

(b) The prime contractor is responsible for managing its subcontracts. The CAO's concern with subcontracts is normally limited to evaluating the prime contractor's management of them (see Part 44). Therefore, supporting contract administration shall not be used for subcontracts unless (1) the Government would otherwise incur undue cost, (2) successful completion of the prime contract is threatened, or (3) it is authorized under paragraph (c) below or elsewhere in this regulation.

(c) For major system acquisitions (see Part 34), the contracting officer may designate certain high-risk or critical subsystems or components for special surveillance (see 44.205) in addition to requesting supporting contract administration. This surveillance shall be conducted in a manner fully consistent with the policy of calling upon the cognizant CAO to perform contract administration functions at a contractor's facility (see Subpart 42.1).

42.205 Designation of the paying office.

If the information is available, the contracting officer shall enter on the contract the name and address of the office designated under agency procedures to make payments on the contract. Unless agency acquisition regulations otherwise provide, the assignment of contract administration to a CAO does not affect the designation of the paying office.

42.206 Reassignment of contract administration.

(a) The administrative contracting officer at the CAO of initial assignment shall reassign a contract for administration when the need for reassignment results from (1) an incorrect initial assignment, (2) organizational transfer of the cognizant CAO, (3) establishment or disestablishment of a CAO, or (4) a change in a CAO's geographical responsibility.

(b) The contracting officer at the contracting office shall

reassign a contract for administration when reasons other than those in paragraph (a) above make reassignment appropriate.

(c) To reassign a contract, the responsible contracting officer shall use a unilateral contract modification. The CAO of initial assignment shall transfer the contract file and necessary supporting documents to the successor CAO.

(d) When warranted by a change in circumstances and approved at a higher level, a contracting officer may recall a contract or function previously assigned for administration.

**SUBPART 42.3—CONTRACT ADMINISTRATION
OFFICE FUNCTIONS**

42.301 General.

When a contract is assigned for administration under Subpart 42.2, the contract administration office (CAO) shall perform contract administration functions in accordance with this regulation, the contract terms, and, unless otherwise agreed upon in formal cross-servicing arrangements (see 42.101(a)), the applicable regulations of the servicing agency.

42.302 Contract administration functions.

(a) The following are the normal contract administration functions to be performed by the cognizant CAO, to the extent they apply, as prescribed in 42.202:

(1) Review the contractor's compensation structure.

(2) Review the contractor's insurance plans.

(3) Conduct post-award orientation conferences.

(4) Review and evaluate contractors' proposals under Subpart 15.8 and, when negotiation will be accomplished by the contracting officer, furnish comments and recommendations to that officer.

(5) Negotiate forward pricing rate agreements (see 15.809).

(6) Negotiate advance agreements applicable to treatment of costs under contracts currently assigned for administration (see 31.109).

(7) Determine the allowability of costs suspended or disapproved as required (see Subpart 42.8). direct the suspension or disapproval of costs when there is reason to believe they should be suspended or disapproved, and approve final vouchers.

(8) Issue Notices of Intent to Disallow or not Recognize Costs (see Subpart 42.8).

(9) Establish final indirect cost rates and billing rates for those contractors meeting the criteria for contracting officer determination in Subpart 42.7.

(10) Attempt to resolve issues in controversy, using ADR procedures when appropriate (see Subpart 33.2); prepare findings of fact and issue decisions under the Disputes clause on matters in which the administrative contracting officer (ACO) has the authority to take definitive action.

(11) In connection with Cost Accounting Standards (see Part 30)—

(i) Determine ~~the~~ adequacy of the contractor's disclosure statements;

(ii) Determine whether disclosure statements are in compliance with Cost Accounting Standards and Part 31;

(iii) Determine the contractor's compliance with Cost Accounting Standards and disclosure statements, if applicable; and

(iv) Negotiate price adjustments and execute supplemental agreements under the Cost Accounting Standards clauses at 52.230-3, 52.2304, and ~~52.230-5~~.

(12) Review and approve or disapprove the contractor's requests for payments under the progress payments clause.

(13) Make payments on assigned contracts when prescribed in agency acquisition regulations (see 42.205).

(14) Manage special bank accounts.

(15) Ensure timely notification by the contractor of any anticipated overrun or underrun of the estimated cost under cost-reimbursement contracts.

(16) Monitor the contractor's financial condition and advise the contracting officer when it jeopardizes contract performance.

(17) Analyze quarterly limitation on payments statements and recover overpayments from the contractor.

(18) Issue tax exemption **certificates**.

(19) Ensure processing and execution of duty-free entry certificates.

(20) For classified contracts, administer those portions of the applicable industrial security program designated as **ACO** responsibilities (see Subpart 4.4).

(21) Issue work requests under maintenance, overhaul, and modification contracts.

(22) Negotiate prices and execute supplemental agreements for spare parts and other items selected through provisioning procedures when prescribed by agency acquisition regulations.

(23) Negotiate and execute contractual documents for settlement of partial and complete contract terminations for convenience, except as otherwise prescribed by Part 49.

(24) Negotiate and execute contractual documents settling cancellation charges under multiyear contracts.

(25) Process and execute novation and change of name agreements under Subpart 42.12.

(26) Perform property administration (see Part 45).

(27) Approve contractor acquisition or fabrication of special test equipment under the clause at 52.245-18, Special Test Equipment

(28) Perform necessary screening, redistribution, and disposal of contractor inventory.

(29) Issue contract modifications requiring the **con-**

tractor to provide packing, crating, and handling services on excess Government property. When the **ACO** determines it to be in the Government's interests, the services may be secured from a contractor other than the contractor in possession of the property.

(30) In facilities contracts—

(i) Evaluate the contractor's requests for facilities and for changes to existing facilities and provide appropriate recommendations to the contracting officer;

(ii) **Ensure** required screening of facility items before acquisition by the contractor;

(iii) Approve use of facilities on a noninterference basis in accordance with the clause at 52.245-9, Use and Charges;

(iv) Ensure payment by the contractor of any rental due; and

(v) Ensure reporting of **items** no longer needed for Government production.

(31) Perform production support, surveillance, and status reporting, including timely reporting of potential and actual slippages in contract delivery schedules.

(32) Perform pre-award surveys (see Subpart 9.1).

(33) Advise and assist contractors regarding their priorities and allocations responsibilities and assist contracting offices in processing requests for special assistance and for priority ratings for privately owned capital equipment.

(34) Monitor contractor industrial labor relations matters under the contract; apprise the contracting officer and, if designated by the agency, the cognizant labor relations advisor, of actual or potential labor disputes; and coordinate the removal of urgently required material from the strikebound contractor's plant upon instruction from, and authorization of, the contracting **officer**.

(35) Perform traffic management services, including issuance and control of Government bills of lading and other transportation documents.

(36) Review the adequacy of the contractor's traffic operations.

(37) Review and evaluate preservation, packaging, and packing.

(38) Ensure contractor compliance with contractual quality assurance requirements (see Part 46).

(39) Ensure contractor compliance with contractual safety requirements.

(40) Perform engineering surveillance to assess compliance with contractual terms for schedule, cost, and technical performance in the areas of design, development, and production.

(41) Evaluate for adequacy and perform surveillance of contractor engineering efforts and management systems that relate to design, development, production, engineering changes, subcontractors, tests, management of engineering resources, reliability and maintainability,

business and small disadvantaged business concerns (see Part 19).

(c) While cognizant Government or contractor personnel may request the contracting **officer** to arrange for orientation, it is up to **the** contracting officer to decide whether a postaward orientation in any form is necessary.

(d) Maximum benefits will be realized when orientation is conducted promptly after award.

42.502 Selecting contracts for postaward orientation.

When deciding whether postaward orientation is necessary **and**, if so, what form it shall take, the contracting officer shall consider, as a minimum, the-

(a) Nature and extent of the preaward survey and any other prior discussions with the contractor,

(b) Type, value, and complexity of the contract;

(c) Complexity and acquisition history of the product or service;

(d) Requirements for spare parts and related equipment;

(e) Urgency of the delivery schedule and relationship of the product or service to critical programs;

(f) Length of the planned production cycle;

(g) Extent of subcontracting;

(h) Contractor's performance history and experience with the product or service;

(i) Contractor's status, if any, as a small business or small disadvantaged business concern;

(j) Contractors performance history with small business and small disadvantaged business subcontracting programs;

(k) Safety precautions required for hazardous materials or operations; and

(l) Complex financing arrangements, such as progress payments, advance payments, or guaranteed loans.

42.503 Postaward conferences.

42.503-1 Postaward conference arrangements.

(a) The contracting officer who decides that a conference is needed is responsible for-

(1) Establishing the time and place of the conference;

(2) Preparing the agenda, when **necessary**;

(3) Notifying appropriate Government representatives (e.g., contracting/contract administration office) and the contractor,

(4) Designating or acting as the chairperson;

(5) Conducting a preliminary meeting of Government personnel; and

(6) Preparing a summary report of the conference.

(b) When the contracting office initiates a conference, the arrangements may be made by that office or, at its request, by the contract administration **office**.

42.503-2 Postaward conference procedure.

The chairperson of the conference shall conduct the meeting. Unless a contract change is contemplated, the chairperson shall emphasize that it is not the purpose of the meeting to change the contract. The contracting officer may make commitments or give directions within the scope of the contracting **officer's** authority and shall put in writing and sign any commitment or direction, whether or not it changes the contract. Any change to the contract that results from the postaward conference shall be made only by a contract modification (see 43.101) referencing the applicable terms of the contract. Participants without authority to bind the Government shall not take action that in any way alters the contract. The chairperson shall include in the summary report (see 42.503-3 below) all information and guidance provided to the contractor.

42.503-3 Postaward conference report.

The chairperson shall prepare and sign a report of the **postaward** conference. The report shall cover all items discussed, including areas requiring resolution, controversial matters, the names of the participants assigned **responsibility** for further actions, and the due dates for the actions. The chairperson shall furnish copies of the report to the contracting office, the contract administration office, **the** contractor, and others who require the information.

42.504 Postaward letters.

In some circumstances, a letter or other written form of communication to the contractor may be adequate **postaward** orientation (in lieu of a conference). **The** letter should identify the Government representative responsible for administering the contract and cite any unusual or significant contract requirements. The rules on changes to the **contract** in 42.503-2 also apply here.

42.505 Postaward subcontractor conferences.

(a) The prime contractor is generally responsible for conducting postaward conferences with subcontractors. However, the prime contractor may invite Government representatives to a conference with subcontractors, or the Government may request that the prime contractor initiate a conference with subcontractors. The prime contractor should ensure that representatives from involved contract administration offices are invited.

(b) Government representatives (1) must recognize the lack of privity of contract between the Government and subcontractors, (2) shall not take action that is inconsistent with or alters subcontracts, and (3) shall ensure that any changes in direction or commitment affecting the prime contract or contractor resulting from a subcontractor conference are made by written direction of the contracting officer to the prime contractor in the same manner as described in 42.503-2.

SUBPART 42.6—CORPORATE ADMINISTRATIVE CONTRACTING OFFICER**42.601 General.**

Contractors with more than one operational location (e.g., division, plant, or subsidiary) often have **corporate-wide** policies, procedures, and activities requiring Government review and **approval** and affecting the work of more than one administrative contracting officer (ACO). In these circumstances, effective and consistent contract administration may require the assignment of a corporate administrative contracting officer (CACO) to deal with corporate management and to perform selected contract administration functions on a corporate-wide basis.

42.602 Assignment and location.

(a) A CACO may be assigned only when (1) the contractor has at least two locations with resident ACO's or (2) the need for a CACO is approved by the agency head or designee (for this purpose, a nonresident **ACO** will be considered as resident if at least 75 percent of the ACO's effort is devoted to a single contractor). One of the resident ACO's may be designated to perform the CACO functions, or a full-time CACO may be assigned. In determining the location of the CACO, the responsible agency shall take into account such factors as the location(s) of the corporate records, corporate office, major plant, cognizant **government** auditor, and overall cost effectiveness.

(b) A decision to initiate or discontinue a CACO assignment should be based on such factors as (1) the benefits of coordination and liaison at the corporate level, (2) the volume of Government sales, (3) the **degree** of control exercised by the contractor's corporate office over Government-oriented lower-tier operating elements, and (4) the impact of corporate policies and procedures on those elements.

(c) Responsibility for assigning a CACO shall be determined as follows:

(1) When all locations of a corporate entity are under the contract administration cognizance of a single agency, that agency is responsible.

(2) When the locations are under the contract administration cognizance of more than one agency, the agencies concerned shall agree on the responsible agency (normally on the basis of the agency with the largest unliquidated dollar balance of affected contracts). In such cases, agencies may sometimes also consider geographic location.

(d) The directory of contract administration components referenced in 42.102(a) includes a listing of **CACO's** and the contractors for which they are assigned responsibility. When the directory indicates that the services of a CACO are available, the provisions of Subpart 42.1 apply to the CACO functions.

42.603 Responsibilities.

(a) The CACO shall perform, on a corporate-wide basis, the contract administration functions (see Subpart 42.3) as designated by the responsible agency. Typical CACO functions include (1) the determination of final indirect cost rates for cost-reimbursement contracts, (2) establishment of advance agreements or recommendations on corporate/home office expense allocations, and (3) administration of Cost Accounting Standards (CAS) applicable to **corporate-level** and **corporatedii** accounting practices.

(b) The CACO shall-

(1) Fully utilize the cognizant contract audit agency financial and advisory accounting services, including (i) advice regarding the acceptability of corporate-wide policies and (ii) advisory audit reports;

(2) Keep cognizant ACO's and auditors informed of important matters under consideration and determinations made; and

(3) Solicit their advice and participation as appropriate.

SUBPART 42.7—INDIRECT COST RATES**42.700 Scope of subpart.**

This subpart prescribes policies and procedures for establishing (a) billing rates and (b) **final** indirect cost rates.

42.701 Definitions.

"Billing rate" means an indirect cost rate (a) established temporarily for interim reimbursement of incurred indirect costs and (b) adjusted as necessary pending establishment of final indirect cost rates.

"Business unit" (see 31.001).

"Final indirect cost rate" means the indirect cost rate established and agreed upon by the Government and the contractor as not subject to change. It is usually established after the close of the contractor's fiscal year (unless the parties **decide** upon a different period) to which it applies. In the case of cost-reimbursement research and development contracts with educational institutions, it may be predetermined; that is, established for a future period on the basis of cost experience with similar contracts, together with supporting data.

"Indirect cost" (see 31.001 and 31.203).

"Indirect cost rate" means the percentage or dollar factor that expresses the ratio of indirect expense incurred in a given period to direct labor cost, manufacturing cost, or another appropriate base for the same period.

42.702 Purpose.

(a) Establishing final indirect cost rates under this subpart provides-

(1) Uniformity of approach with a contractor when more than one contract or agency is involved;

(2) Economy of administration; and

CERTIFICATE

I, _____, certify that I am the Secretary of ABC CORPORATION; that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day _____ of _____ 19 _____

By _____
[CORPORATE SEAL]

CERTIFICATE

I, _____, certify that I am the Secretary of XYZ CORPORATION; that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day _____ of _____ 19 _____

By _____
[CORPORATE SEAL]

42.1205 Agreement to recognize contractor's change of name.

(a) If only a change of the contractor's name is involved and the Government's and contractor's rights and obligations remain unaffected, the parties shall execute an agreement to reflect the name change. The contractor shall forward to the responsible contracting officer three signed copies of the Change-of-Name Agreement, and one copy each of the following:

(1) The document effecting the name change, authenticated by a proper official of the State having jurisdiction.

(2) The opinion of the contractor's legal counsel stating that the change of name was properly effected under applicable law and showing the effective date.

(3) A list of all affected contracts and purchase orders remaining unsettled between the contractor and the Government, showing for each the contract number and type, and name and address of the contracting office. The contracting officer may request the total dollar value as amended and the remaining unpaid balance for each contract.

(b) The following suggested format for an agreement may be adapted for specific cases:

CHANGE-OF-NAME AGREEMENT

The ABC CORPORATION (Contractor), a corporation duly organized and existing under the laws of _____ [insert State], and the UNITED STATES OF AMERICA (Government), enter into this Agreement as of _____ [insert date when the change of name became effective under applicable State law].

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the _____ [insert name(s) of agency(ies)], has entered into certain contracts and purchase orders with the XYZ CORPORATION, namely: _____ [insert contract or purchase or & r identifications]; [or delete "namely" and insert "as shown in the attached list marked "Exhibit A" and incorporated in this Agreement by reference. "]. The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made by the Government and the Contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Contractor has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) The XYZ CORPORATION, by an amendment to its certificate of incorporation, dated _____ 19____, has changed its corporate name to ABC CORPORATION.

(3) This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and of the Contractor under the contracts are unaffected by this change.

(4) Documentary evidence of this change of corporate name has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT-

(1) The contracts covered by this Agreement are amended by substituting the name "ABC CORPORATION" for the name "XYZ CORPORATION" wherever it appears in the contracts; and

(2) Each party has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA,

By _____
Title _____

ABC CORPORATION,

By _____
Title _____

[CORPORATE SEAL]

CERTIFICATE

I, _____, certify that I am the Secretary of ABC CORPORATION; that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this _____ day of _____ 19____.

By _____
[CORPORATE SEAL]

SUBPART 42.14—TRAFFIC AND TRANSPORTATION MANAGEMENT

42.1401 General.

(a) The contract administration office (CAO) shall ensure that instructions to contractors result in the most efficient and economical use of carrier services and equipment. If the transportation data regarding f.o.b. origin contracts is insufficient for Government transportation management purposes, the CAO shall obtain the data used in the evaluation of offers.

(b) Transportation personnel assigned to or supporting the CAO, or appropriate agency personnel, are responsible for -

- (1) Furnishing timely routings and releases for port shipments;
- (2) Monitoring shipments to provide for carload or truckload quantities when practicable;
- (3) Controlling and issuing U.S. Government bills of lading (GBL's) and determining proper freight classification descriptions;
- (4) Reviewing documentation to ensure the proper distribution and validation of shipping documents;
- (5) Developing, and advising on, transportation cost differentials brought on by proposed changes in contract terms; e.g., delivery schedules;
- (6) Determining, for contract requirements, the size and carrying capability of carrier equipment to transport overdimensional and/or overweight supplies, hazardous materials, or supplies requiring special shipping arrangements;
- (7) Developing information and reporting movements that may be the basis for negotiating special rates for volume movements or for rate adjustments (see 42.1402(b));
- (8) Exercising control of irregularities in preservation, packing, loading, blocking and bracing, and other causes contributing to loss and damage; sealing of carrier equipment and documentation;
- (9) Providing information on the use of transit arrangements;
- (10) Recommending, when appropriate, prepayment by contractor for f.o.b. origin shipments or parcel post (see 47.303-17 and 42.1404);
- (11) Recommending, when appropriate, the use of commercial forms and procedures for small shipments of a recurring nature if transportation costs do not exceed \$100, as authorized in 41 CFR 101-41.304-2 and, for the Department of Defense (DOD), in Chapter 32, Defense Traffic Management Regulation (DTMR) (AR 55-355, NAVSUPINST 4600.70, AFM 75-2, MCO P-4600.14A, DLAR 4500.3);
- (12) Diverting, reconsigning, tracing, and expediting shipments;

(13) Considering the capabilities of contractors for meeting new or emergency requirements that arise during the contract administration and using these capabilities when appropriate; and

(14) Using toutings through established consolidation stations when it is in the Government's interest.

(c) Civilian agencies shall consult and cooperate with the Office of Transportation of the General Services Administration (GSA) as required in 41 CFR 101-40. (See 47.105, Transportation assistance, for assistance to civilian Government activities or to military installations.)

42.1402 Volume movements within the continental United States.

(a)(1) For purposes of contract administration, a volume movement is-

(i) In DOD, the aggregate of freight shipments amounting to or exceeding 25 carloads, 25 truckloads, or 500,000 pounds, to move during the contract period from one origin point for delivery to one destination point or area; and

(ii) In civilian agencies, 50 short tons (100,000 pounds) in the aggregate to move during the contract period from one origin point for delivery to one destination point or area

(2) Transportation personnel assigned to or supporting the CAO, or appropriate agency personnel, shall report planned and actual volume movements in accordance with agency regulations. DOD activities report to the Military Traffic Management Command (MTMC) under the Defense Traffic Management Regulation (DTMR). Civilian agencies report to GSA, Office of Transportation, or other designated offices under the Federal Property Management Regulations (FPMR), specifically 41 CFR 101-40.305-2.

(b) Reporting of volume movements permits MTMC and GSA transportation personnel to determine the reasonableness of applicable current rates and, when appropriate, to negotiate adjusted or modified rates.

42.1403 Shipping documents covering f.o.b. origin shipments.

(a) Except as provided in 47.303-17, when a contract specifies delivery of supplies f.o.b. origin with transportation costs to be paid by the Government, the contractor shall make shipments on U.S. Government bills of lading (GBL's), or on other shipping documents prescribed by MTMC in the case of seavan containers, furnished by the CAO or the appropriate agency transportation office. Each agency shall establish appropriate procedures by which the contractor shall obtain GBL's. The contracting officer shall not authorize the contractor to ship on commercial bills of lading for conversion to GBL's unless delivery is extremely urgent and GBL's are not readily available.

PART 42—CONTRACT ADMINISTRATION

42.1405

(b) The possible application of reduced rates under section 10721 of the Interstate Commerce Act for shipments on commercial bills of lading and the Commercial Bill of Lading Notations clause are discussed at 47.104.

(c)(1) The limited authority for the use of commercial forms and procedures to acquire freight or express transportation for small shipments of a recurring nature when transportation costs do not exceed \$100, is prescribed in the Transportation Documentation and Audit Regulation, specifically 41 CFR 101-41.304-2.

I (2) For DOD shipments, corresponding guidance is in Chapter 32 of the DTMR.

42.1404 Shipments by parcel post or other classes of mail.

42.1404-1 Parcel post eligible shipments.

(a)(1) Use of parcel post or other classes of mail permits direct movements from source of supply to the user, without the intermediate documentation that is required when supplies are transported through depots or air or water terminals. However, the use of parcel post and other classes of mail shall be confined to deliveries ofailable matter that meet the size, weight, and distance limitations prescribed by the U.S. Postal Service. Parcel post eligible shipments for overseas destinations will not be sent via Small Package Delivery services or parcel post to CONUS military air or water terminals. These shipments will be mailed through the APO or FPO to the overseas user. Contractors shall not divide delivery quantities intoailable parcels for the purpose of avoiding shipments by other modes of transportation.

(2) When parcel post or other classes of mail are used by contractors, they shall prepay the postage costs by using their own mailing labels or stamps and include prepaid postage costs as separate items in the invoices for supplies shipped.

(b)(1) Authority for contractors to use indicia mail may be obtained by submitting Postal Service (PS) Form 3601, Application to Mail Without Affixing Postage Stamps, to the U.S. Postal Service for approval following agency procedures. If approval is granted, the agency shall follow the U.S. Postal Service permit requirements.

(2) When indicia mail is used, the contractor will be provided with a completed PS Form 3601 and official penalty permit imprint mailing labels, envelopes, or cards printed on the top right side in a rectangular box: Postage and Fees Paid (first line); Government Agency Name (second line); and, the proper permit imprint number (G-000) on the third line. These must also bear in the upper left corner in every case the printed return address of the agency concerned above the printed phrases "Official Business" and "Penalty for Private Use, \$300." The name and address of a private person or firm shall not be shown.

(c) When a contractor uses the contractor's own label for making a shipment to a post office servicing military and other agency consignees outside the United States, the contractor shall stamp or imprint the parcel immediately above the label in 1/4 inch block letters with (i) the name of the agency and (ii) the words "Official Mail-Contents for Official Use-Exempt from Customs Requirements." This permits identification and expedites handling within the postal system. Use of this marking does not eliminate the requirement for payment of postage by the contractor when so required by the contract or when the contractor is to be reimbursed for the cost of postage.

(d) Contractors may not insure shipments at Government expense for the purpose of recovery in case of loss and/or damage, except that minimum insurance required for the purposes of obtaining receipts at point of origin and upon delivery is authorized.

42.1404-2 Contract clauses.

(a) The contracting officer shall insert the clause at 52.242-10, F.o.b. Origin-Government Bills of Lading or Prepaid Postage; in solicitations and contracts when f.o.b. origin shipments are to be made using Government bills of lading or prepaid postage.

(b) The contracting officer shall insert the clause at 52.242-11, F.o.b. Origin-Government Bills of Lading or Indicia Mail, in solicitations and contracts when f.o.b. origin shipments are to be made using Government bills of lading or indicia mail, if indicia mail has been authorized by the U.S. Postal Service.

42.1405 Discrepancies incident to shipment of supplies.

(a) Discrepancies incident to shipment include overage, shortage, loss, damage, and other discrepancies between the quantity and/or condition of supplies received from commercial carriers and the quantity and/or condition of these supplies as shown on the covering bill of lading or other transportation document. Regulations and procedures for reporting and adjusting discrepancies in Government shipments are in Subpart 40.7 of the Federal Property Management Regulations (41 CFR 101-40.7). (Military installations shall consult "Reporting of Transportation Discrepancies in Shipments," AR 55-38, NAVSUP INST 4610.33C, AFR 75-18, MCO P4610.19D, DLAR 4500.15.)

I (b) Generally, when the place of delivery is f.o.b. origin, the Government consignee at destination is also accountable for the supplies, and all claims or reports dealing with discrepancies shall be initiated at that point in accordance with the property accountability regulations of the agency concerned.

(c) If supplies are acquired on an f.o.b. destination basis, any claim arising from a discrepancy occurring in transit is

a matter for settlement between the contractor and the carrier. However, the Government consignee shall (1) notify the carrier of the discrepancy by noting the exception **on the** carrier's delivery receipt and (2) furnish all available data to the **CAO** or appropriate agency office, which shall promptly transmit **the** data to the contractor.

42.1406 Report of shipment.

42.1406-1 Advance notice.

Military (and as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of shipments en route **from** contractors' plants. Generally, this notification is required only for classified material; sensitive, controlled, and certain other protected

material; explosives, and some other hazardous materials; selected shipments requiring movement control; or minimum carload or truckload shipments. It facilitates arrangements for transportation control, labor, space, and use of materials handling equipment at destination. Also, timely **receipt** of notices by the consignee transportation **office precludes** the **incurring** of demurrage and vehicle detention charges.

42.1406-2 Contract clause.

The contracting officer shall insert the clause at 52.242-12, Report of Shipment (REPSHIP), in solicitations and contracts when advance notice of shipment is required for safety or security reasons, or where carload or truckload shipments will be made to **DoD** installations or, as required, to civilian agency facilities.

PART 45—GOVERNMENT PROPERTY

45502

shall be required for any non-Government use of active plant equipment. Before authorizing **non-Government** use exceeding 25 percent, the contracting **officer** shall obtain approval of the head (or designee) of the agency that awarded the contract to which the property is accountable.

(b) The approvals under paragraph (a) above may be granted only when it is in the Government's interest—

(1) To keep the equipment in a high state of operational readiness through regular use;

(2) Because substantial savings to the Government would accrue through overhead cost-sharing and **receipt** of rental; or

(3) To avoid an inequity to a contractor who is required by the Government to retain the equipment in place.

(c) If the contractor's request for non-Government use in excess of 25 percent is approved, the contracting officer may require the contractor to insure the property against loss or damage. Facilities contracts may be **modified** to require such insurance.

SUBPART 45.5—MANAGEMENT OF GOVERNMENT PROPERTY IN THE POSSESSION OF CONTRACTORS

45.500 Scope of subpart.

This subpart prescribes the minimum **requirements** contractors must meet in establishing and maintaining control over Government property. It applies to contractors organized for profit and, except as otherwise noted, to non-profit organizations. In order for the special requirements in this subpart governing nonprofit organizations to apply, the contract must identify the contractor as a nonprofit organization. If there is any inconsistency between this subpart and the terms of the contract under which the Government property is provided, the terms of the contract shall govern.

45.501 Definitions.

"Accessory item," as used in this subpart, means an item that facilitates or enhances the operation of **plant** equipment but which is not essential for its operation.

"Agency-peculiar property" (see 45.301).

"Auxiliary item," as used in this subpart, means an item without which the basic unit of plant equipment cannot operate.

"Contractor-acquired property" (see 45.101).

"Custodial records," as used in this subpart, means written memoranda of any kind, such as requisitions, issue hand receipts, tool checks, and **stock** record books, used to control items issued from tool cribs, tool rooms, and stock rooms.

"Discrepancies incident to shipment," as used in this subpart, means all deficiencies incident to shipment of Government property to or from a contractor's facility whereby differences exist between the property purported to have been shipped and property actually received. Such

deficiencies include loss, damage, destruction, improper status and condition coding, errors in identity or classification, and improper consignment.

"Facilities" (see 45.301).

"Government-furnished property" (see 45.101).

"Government property" (see 45.101).

"Individual item record," as used in this subpart, means a separate card, form, document or specific line(s) of computer data used to account for one **item** of property.

"**Material**" (see 45.301).

"**Nonprofit** organization" (see 45.301).

"Plant equipment*" (see 45.101).

"Property administrator," as used in this subpart, means an authorized representative of contracting officer assigned to administer the contract requirements and obligations relating to Government property.

"**Real property**" (see 45.101).

"Salvage," as used in this subpart, means property that, because of its worn, damaged, deteriorated, or incomplete condition or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs, but has some value in excess of its scrap value.

"Scrap," as used in this subpart, means personal property that has no value except for its basic material content.

"**Special** test equipment" (see 45.101).

"Special tooling" (see 45.101).

"Stock record," as used in this subpart, means a perpetual inventory record which shows by nomenclature the quantities of each item received and issued and the balance on hand.

"Summary record," as used in this subpart, means a separate card, form, document or specific line(s) of computer data used to account for multiple quantities of a line item of special tooling, special test equipment, or plant equipment costing less than \$5,000 per unit.

"Utility distribution system," as used in this subpart, includes distribution and transmission lines, substations, or installed equipment forming an integral part of the system by which gas, water, steam, electricity, sewerage, or other utility services are transmitted between the outside building or **structure** in which the services are used and the point of origin, disposal, or connection with some other system. It does not include communication services.

"Work-in-process," as used in this subpart, means material that has been released to manufacturing, engineering, design or other services under the contract and includes undelivered manufactured parts, assemblies, and products, either complete or incomplete.

45.502 Contractor responsibility.

(a) The contractor is directly responsible and accountable for all Government property in accordance with the requirements of the contract. This includes Government property in the possession or control of a subcontractor. The contractor shall establish and maintain a system in accordance with this subpart to control, protect, preserve,

and maintain all Government property. This property control system shall be in writing unless the property administrator determines that maintaining a written system is unnecessary. The system shall be reviewed and if satisfactory, approved in writing by the property administrator.

(b) The contractor shall maintain and make available the records required by this subpart and account for all Government property until relieved of that responsibility. The contractor shall furnish all necessary data to substantiate any request for relief from responsibility.

(c)(1) The contractor shall be responsible for the control of Government property under this Subpart 45.5 upon-

(i) Delivery of Government-furnished property into its custody or control;

(ii) Delivery, when property is purchased by the contractor and the contract calls for reimbursement by the Government (this requirement does not alter or modify **contractual** requirements relating to passage of title);

(iii) Approval of its claim for reimbursement by the Government or upon issuance for use in contract performance, whichever is earlier, of property withdrawn from contractor-owned stores and charged directly to the contract; or

(iv) Acceptance of title by the Government when title is acquired pursuant to specific contract clauses or as a result of change orders or contract termination.

(2) Property to which the Government has acquired a lien or title solely as a result of advance, progress, or partial payments is not subject to the requirements of this subpart

(d) The contractor shall require subcontractors provided Government property under the prime contract to comply with the requirements of this subpart. Procedures for assuring subcontractor compliance shall be included in the contractor's property control system. Where the property administrator assigned to the contract has requested supporting property administration from another contract administration office, the contractor may accept the system approval of the supporting property administrator instead of performing duplicative actions to assure the subcontractor's compliance.

(e) If the property administrator finds any portion of the contractor's property control system to be inadequate, the contractor must take any necessary corrective action before the system can be approved. If the contractor and property administrator cannot agree regarding the adequacy of control and corrective action, the matter shall be referred to the contracting officer.

(f) When Government property (excluding misdirected shipments, see 45.505-12) is disclosed to be in the possession or control of the contractor but not provided under any contract, the contractor shall promptly (1) record such property according to the established property control procedure and (2) furnish to the property administrator all 45-12 (FAC 90-20)

known circumstances and data pertaining to its receipt and a statement as to whether there is a need for its retention.

(g) The contractor shall promptly report all Government property in excess of the amounts needed to complete full performance under the contracts providing it or authorizing its use.

(h) When unrecorded Government property is found, both the cause of the discrepancy and actions taken or needed to prevent recurrence shall be determined and reported to the property administrator.

45.502-1 Receipts for Government property.

The contractor shall furnish written receipts for all or specified classes of Government property only when the property administrator deems it essential for maintaining minimum acceptable property controls. If evidence of receipt is required for contractor-acquired property, the contractor shall provide it before submitting its request for payment for the property. For Government-furnished property, the contractor shall provide the required receipt immediately upon receipt of the property.

45.502-2 Discrepancies incident to shipment.

(a) **Government-furnished property.** If overages, shortages, or damages are discovered upon receipt of Government-furnished property, the contractor shall provide a statement of the condition and apparent causes to the property administrator and to other activities specified in the approved property control system. **Only** that quantity of property actually received will be recorded on the official records.

(b) **Contractor-acquired property.** The contractor shall take all actions necessary in adjusting overages, shortages, or damages in shipment of contractor-acquired property from a vendor or supplier. However, when the shipment has moved by Government bill of lading and carrier liability is indicated, the contractor shall report the discrepancy in accordance with paragraph (a) above.

45.503 Relief from responsibility.

(a) Unless the contract or contracting officer provides otherwise, the contractor shall be relieved of property control responsibility for Government property by-

(1) Reasonable and proper consumption of property in the performance of the contract as determined by the property administrator;

(2) Retention by the contractor, with the approval of the contracting officer, of property for which the Government has received consideration;

(3) The authorized sale of property, provided the proceeds are received by or credited to the Government;

(4) Shipment from the contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the contractor; or

(5) A determination by the contracting officer of the contractor's liability for any property that is lost, dam-

aged, destroyed, or consumed in excess of that normally anticipated in a manufacturing or processing operation, if -

- (i) The determination is furnished to the contractor in writing;
- (ii) The Government is reimbursed where required by the termination; and
- (iii) Property rendered unserviceable by damage is properly disposed of, and the determination is cross-referenced to the shipping or other documents evidencing disposal.

(b) Nonprofit organizations are relieved of responsibility for Government property when title to the property is transferred to the contractor (see 35.014).

45.504 Contractor's liability.

(a) Subject to the terms of the contract and the circumstances surrounding the particular case, the contractor may be liable for shortages, loss, damages, or destruction of Government property. The contractor may also be liable when the use or consumption of Government property unreasonably exceeds the allowances provided for by the contract, the bill of material, or other appropriate criteria

(b) The contractor shall investigate and report to the property administrator all cases of loss, damage, or destruction of Government property in its possession or control as soon as the facts become known or when requested by the property administrator. A report shall be furnished when completed and accepted products or end items are lost, damaged, or destroyed while in the contractor's possession or control.

(c) The contractor shall require any of its subcontractors possessing or controlling Government property accountable under the contract to investigate and report all instances of loss, damage, or destruction of such property.

45.505 Records and reports of Government property.

(a) The contractor's property control records shall constitute the Government's official property records unless an exception has been authorized. The contractor shall establish and maintain adequate control records for all Government property, including property provided to and in the possession or control of a subcontractor. The property control records specified in this section are the minimum required by the Government. Unless the property administrator directs otherwise, when a subcontractor has an approved property control system for Government property provided under its own prime contracts, the contractor shall use the records created and maintained under that system.

(b) The contractor's property control system shall provide financial accounts for Government-owned property in the contractor's possession or control. The system shall be subject to internal control standards and be supported by property records for such property.

(c) Official Government property records must identify all Government property and provide a complete, current,

auditable record of all transactions. The contractor's system of records maintenance shall be sufficient to adequately control Government property as required by this section. The contractor's system of records maintenance, as a minimum, shall be equivalent to and maintained in the same manner as the contractor's system for maintaining records of contractor-owned property, but need not exceed the requirements of this subpart. The records shall be safeguarded from tampering or destruction. Records shall be accessible to authorized Government personnel.

(d) Separate property records for each contract are desirable, but a consolidated property record may be maintained, if it provides the required information.

(e) Special tooling and special test equipment fabricated from materials that are the property of the Government shall be recorded as Government-owned immediately upon fabrication. Special tooling and special test equipment fabricated from materials that are the property of the contractor shall be recorded as Government property at the time title passes to the Government.

(f) Property records of the type established for components acquired separately shall be used for serviceable components permanently removed from items of Government property as a result of modification.

(g) The contractor's property control system shall contain a system or technique to locate any item of Government property within a reasonable period of time.

45505-1 Basic information.

(a) Unless summary records are used as authorized under paragraph (b) of this section, the contractor's property control records shall provide the following basic information for every item of Government property in the contractor's possession, regardless of value (other subsections of 45.505 require additional information for specific categories of Government property):

- (1) The name, description, and National Stock Number (if furnished by the Government or available in the property control system).
- (2) Quantity received (or fabricated), issued, and on hand.
- (3) Unit price (and unit of measure).
- (4) Contract number or equivalent code designation.
- (5) Location.
- (6) Disposition.
- (7) Posting reference and date of transaction.

(b) Summary records are normally adequate for special tooling, special test equipment, and plant equipment costing less than \$5,000 per unit, except where the contract administration office determines that individual item records are necessary for effective control, calibration, or maintenance. Summary records shall provide the information listed in paragraphs (a)(1) through (a)(7) of this section, but may reference a general location, provided the contractor can locate the property within a reasonable period of time.

45.5052 Records of pricing information.

(a) **Requirement for unit prices.** (1) The contractor's property control system shall contain the unit price for each item of Government property except as provided in (b) below. When a contractor records the unit price of property on other than the quantitative inventory records, those supplementary records shall become part of the official Government property records.

(2) (Note: **This subparagraph (a)(2) does not apply to nonprofit organizations.**) The requirement that unit prices be contained in the official Government property records does not apply to those separate property records located at a contractor's secondary sites and subcontractor plants: *provided, that-*

(i) Records maintained by the prime contractor at its primary site include unit prices; and

(ii) The prime contractor agrees to furnish actual or estimated unit prices to the secondary site or subcontractor as the need arises.

(3) When definite information as to unit price cannot be obtained, reasonable estimates will be used.

(b) Determining **unit price**-(1) **Contractor-acquired and contractor-fabricated property.** Except for items fabricated by nonprofit organizations for research and development purposes, the unit price of contractor-acquired and contractor-fabricated property shall be determined in accordance with the system established by the contractor in conformance with consistently applied sound accounting principles. Generally, **separate** unit prices should **be** applied to items of special tooling and special test equipment fabricated or acquired by the contractor. However, if the contractor's accounting system is acceptable, and if maintaining detailed cost records results in excessive accounting cost or is otherwise impracticable, group pricing may be used for special tooling, special test equipment, and work-in-process in accordance with the contractor's acceptable cost accounting system. All processed material, fabricated **parts**, components, and assemblies charged to the contractor's work-in-process inventory, including items in temporary storage while awaiting processing, may be considered as work-in-process for this purpose.

(2) **Government-furnished property.** The Government shall determine and furnish to the contractor the unit price of Government-furnished property. Transportation and installation costs shall not generally be considered as part of the unit price for this purpose. Normally, the unit price of Government-furnished **property** will be provided on the document covering shipment of the property to the contractor. In the event the unit price is not provided on the document, the contractor will take action to obtain the information.

45.505-3 Records of material.

(a) **General.** All Government material furnished to the contractor, as well as other material to which title has passed to the Government by reason of allocation from 45-14 (FAC 90-20)

contractor-owned stores or purchase by **the** contractor for direct charge to a Government contract or otherwise, shall be recorded in accordance with the contractor's property control system and the requirements of this section.

(b) **Consolidated stock record.** When a contractor has more than one Government contract under which Government material is provided a consolidated record for materials may be authorized by the property **administrator**, *provided, the* total quantity of any item is allocated to each contract by contract number and each requisition of material from contractor-owned stores is charged to the contract on which the material is to be used. The supporting document or issue slip shall show the contract number or equivalent code designation to which the issue is charged.

(c) **Custodial records.** The contractor shall maintain custodial records for tool crib items, guard force items, protective clothing, and other items issued to individuals for use in their work.

(d) **Use of receipt and issue documents.** (Note: **This paragraph (d) does not apply to nonprofit organizations.**) The property administrator may authorize **the** contractor to maintain, in lieu of stock records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of Government-provided material that is issued for immediate consumption and is not entered in the inventory record as a matter of sound business practice. This method of control may be authorized **for—**

(1) Material charged through overhead

(2) Material under research and development contracts;

(3) Subcontracted or outside production items;

(4) **Nonstock** or special items;

(5) Items that are produced for direct charge to a contract, or are acquired and issued for installation upon receipt, and involve no spoilage; and

(6) Items issued from contractor-owned inventory direct to production or maintenance, etc.

(e) **Material issued directly upon receipt.** (Note: **This paragraph (e) applies only to nonprofit organizations.**)

(1) Under fixed-price contracts, the contractor's documents evidencing receipt and issue will be accepted as property control records for **Government-furnished** material issued directly by the contractor upon receipt so as to be considered consumed under the contract.

(2) Under cost-reimbursement contracts, Government invoices, contractor's purchase documents, or other evidence of acquisition and issue will be accepted as adequate property records for material furnished to or acquired by the contractor and issued directly so as to be considered consumed under **the** contract.

(f) **Multicontract cost and material control.** (Note: **This paragraph (f) does not apply to nonprofit organizations.**)

(1) **Description and scope.** A multicontract cost and material control system substitutes a system of financial

accounting for the requirements for physical **identification** of Government material. The system operates as follows:

(i) The contractor may acquire, requisition, receive, store, and issue like items of material for the total requirements of all contracts involved in the system without identifying the material to each contract.

(ii) The contractor may commingle, during any stage of contract performance, Government-owned and contractor-owned material and work-in-process that was furnished, acquired, or produced for all Government contracts covered by the system, without physical segregation or identification to the individual contracts.

(iii) In lieu of physical segregation and identification to individual contracts, periodic calculation of requirements and distribution of costs to all contracts permits the allocation of costs of material to products delivered. This system, by reflecting the material expended to perform each contract at any stage in production, permits usage analysis to determine the reasonableness of consumption and expenditure of Government material.

(iv) The system may include all Government contracts of any type that involve common repetitive operations.

(v) The system does not require commingling of all common materials under all contracts. For example, items of Government-furnished material of high value or in short supply may be excluded from commingling and reserved for use in performing the contract under which furnished.

(vi) The contractor shall take physical inventories of material in stores included in the systems (other than work-in-process) at least annually, extend and reconcile prices to the quantitative balance for each item, and record adjustments in the stock record and financial inventory control accounts. Such physical inventories and adjustments, as well as equitable distribution to cost accounts of any inventory losses, shall be reviewed by and are subject to the approval of the property administrator.

(2) **Criteria.** A multicontract cost and material control system may be authorized if-

(i) The contractor demonstrates that adopting the system will result in savings or improved operations or that it will otherwise be in the Government's interest;

(ii) The system is applied to existing Government contracts only and excludes materials acquired or costs incurred for non-Government work or in anticipation of future Government work; and

(iii) The contractor's accounting system is adequate to-

(A) Provide on a complete and timely basis a

clear "audit trail" from costs of materials acquired for each contract to materials used or disposed of on each contract;

(B) Reflect separately for Government-furnished and contractor-acquired material in stores (except work-in-process) the inventory balances as affected by receipts, issues, adjustments, and other dispositions;

(C) Determine unit costs for each identifiable part, component, subassembly, assembly, end item, and contract item;

(D) Calculate amounts for cost reimbursements and progress payments during the life of the contract by applying or allocating such unit costs developed through each stage of work-in-process to contract items for the requirements of each contract; and

(E) Assure that when Government material furnished for use under one contract is authorized for use on another contract, the initial contract receives credit.

(3) **Authorization.** The administrative contracting officer may authorize a contractor who is performing or will perform more than one Government contract to use the multicontract cost and material control system. The property administrator shall approve whatever detailed operating procedures are necessary for each system authorized.

(4) **Requirement.** Whenever a multicontract cost and material control system is authorized, the contractor's financial accounts shall include all material in the system acquired or furnished for Government work and shall satisfy the requirements in subdivision (f)(2)(iii) of 45.5053 above.

45.505-4 Records of special tooling and special test equipment.

(Note: The special tooling requirements of this subsection 45.505-4 do not apply to nonprofit organizations except for paragraph (c).)

(a) Unless summary records are used as authorized under 45.505-1(b), the contractor's property control system shall provide the basic information listed in 45.505-1(a) regarding each item of Government-owned special tooling and special test equipment, including any general purpose test equipment incorporated as components in such a manner that removal and reuse may be feasible and economical.

(b) If the contractor uses group pricing of special tooling or special test equipment, as recognized in 45.505-2(b), unit prices may be computed when required.

(c) In the case of special tooling acquired or fabricated by nonprofit organizations or furnished by the Government to nonprofit organizations for research and development, the Government invoices, contractor's purchase document, or other documents that evidence acquisition or issue will

be accepted as adequate property control **records**.

(d) **Records** identifying special tooling and **special** test equipment shall include the identification number and item on which used.

(e) The contractor shall, when **specified** by the contract, identify and report special tooling and special test equipment by retention category (e.g., assembly tooling or critical tooling for spares or replacements).

45.505-5 Records of plant equipment.

(a) Unless summary records are used as authorized under **45.505-1(b)**, the contractor shall maintain individual item records for each item of plant equipment.

(b) In addition to the information required in 45.505-1, the contractor's records of Government-owned plant equipment, regardless of value, shall include

(1) Federal Supply Code for the manufacturer (as listed in Cataloging Handbook **H4-1** and **H4-2**) (available from the Superintendent of Documents, Government Printing Office (GPO), Washington, D.C. 20402);

(2) Federal Supply Classification (Cataloging Handbooks **H2-1**, **H2-2**, and **H2-3**) (available from GPO); and

(3) The original manufacturer's model or part number.

(c) For each item of Government-owned plant equipment having a unit cost of \$5,000 or more, the contractor shall, in addition to the requirements of (b) above, include-

(1) Serial number and year built (when available);

(2) Government identification/tag number; and

(3) Acquisition and disposition document references and dates.

(d) The property administrator may determine that the information in (c)(1) and (2) above should be recorded in the property records for plant equipment costing less than \$5,000.

(e) Accessory and auxiliary equipment shall be recorded on the record of the associated item of plant equipment. If the accessory or auxiliary item is not attached to, a part of, or acquired for use with a specific item of plant equipment, it shall be recorded either in an individual item record or in a summary stock record. When accessory and auxiliary items are permanently separated from the basic item of plant equipment, the unit price of the basic item shall be appropriately reduced.

45.505-6 Special reports of plant equipment.

An agency may set requirements for any special reports of plant equipment it determines necessary.

45.505-7 Records of real property.

(a) The contractor shall maintain an itemized record of the description, location, acquisition cost, and disposition of all Government real property (including unimproved

real property); all alterations, all construction **work**, and sites connected with such alteration and construction, acquired by purchase, lease, or otherwise. These records, including maps, drawings, plans, specifications, and supplementary data where necessary, shall (1) be complete, (2) show the original cost of the property and improvements and the cost of any changes and additions, and (3) be 'appropriately indexed.

(b) Costs incurred by the contractor or the Government for new construction, including erection, installation, or assembly of Government real property in possession of the contractor, shall be capitalized in the official Government real property records and **financial** accounts maintained by the contractor for the Government.

(c) Costs incurred for additions, expansions, extensions, conversions, alterations, and improvements, including applicable portions of capital maintenance, that increase the value, life, utility, capability, or serviceability of Government **real** property shall be capitalized.

(d) Costs incurred for portable buildings or facilities specifically constructed for tests that involve destruction of the facility shall not be capitalized in the Government real property records or financial accounts.

(e) Costs incurred for maintenance+ repair, or rearrangement to maintain the Government real property in good physical condition, utility, capacity, or serviceability shall be charged to expense, and the real property records shall not be affected.

(f) When Government-owned real property is sold, transferred, donated, destroyed by fire or other cause, abandoned-in-place, or condemned, the **financial** accounts shall be reduced by the presently recorded cost and the real property records annotated with a supporting statement, including pertinent facts.

45.505-8 Records of scrap or salvage.

(a) The contractor shall maintain records of all scrap or salvage generated, except as provided in 45.507. These **records** shall conform to the contractor's established system of scrap and salvage control approved by the property administrator.

(b) The contractor's property control system shall provide the following information:

(1) Contract number, if practical, or equivalent code designation from which the scrap or salvage derived.

(2) Nomenclature or description of salvable items or classification (material content) of scrap.

(3) Quantity on hand.

(4) Posting reference and date of transaction.

(5) Disposition.

45.505-9 Records of related data and information.

The contractor shall maintain property control and accountability, in accordance with sound business practice, of manufacturing or assembly drawings; **installation**, operation, repair, or maintenance instructions; and other similar

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information furnished to the contractor by the Government or generated or acquired by the contractor under the contract and for which title vests in the Government. The requirements of this subpart do not otherwise apply to such property.

45.505-10 Records of completed products.

The contractor shall maintain a record of all completed products produced under a contract as follows:

(a) When there is no time lapse between Government inspection and acceptance of the completed products and shipment from the plant site, the records shall, as a minimum, consist of a summary of quantities accepted and shipped. When end items are accepted by the Government and stored with the contractor awaiting shipment, the record shall identify quantities stored, location, and disposition action.

(b) On contracts that provide for the contractor to retain completed products for further use under the contract or other contracts, such items shall be considered "Government-furnished property" upon acceptance and shall be recorded as required by this subpart.

(c) When completed products are returned to a contractor under the terms of a warranty clause, the contractor shall maintain, by contract, a record containing a description of the items involved, quantities received and returned to the Government, and other pertinent data necessary to determine that a proper accounting for all property has been made.

45.505-11 Records of transportation and installation costs of plant equipment.

(Note: This subsection 45.505-11 does not apply to nonprofit organizations.)

(a) *Transportation costs.* (1) The contractor shall record within the property control system the transportation and installation costs directly borne by the Government for each item of Government-owned plant equipment with an acquisition cost of \$5,000 or more. The administrative contracting officer may require the contractor to provide such recorded costs for use in computing rental charges.

(2) If transportation costs are not included in the price of equipment delivered, the contractor shall contact the property administrator for instructions for obtaining applicable freight data.

(b) *Installation costs.* (1) When the contractor performs installation, the cost shall be computed in accordance with the contractor's accounting system (if the system is acceptable for other contract cost determination purposes) and recorded in the property record.

(2) When installation is subcontracted, the contractor shall record the cost paid to the subcontractor in the property record.

(3) When installation costs are included in the price of equipment delivered to the using location, the property records should be so annotated.

45.505-12 Records of misdirected shipments.

The contractor's property control system shall provide the following information regarding each misdirected shipment of Government property received:

(a) Identity of shipment, such as shipping document or bill of lading.

(b) Origin of shipment.

(c) Content (items in the shipment) per shipping documents, if available.

(d) Location.

(e) Disposition.

45.505-13 Records of property returned for rework.

(a) The contractor shall maintain quantitative records of property returned for processing to assure control from time of receipt through return of the items to the Government. The contractor shall establish item records under its property control system and shall include the information required in 45.505-1.

(b) The records shall specify the quantity of units returned to the Government and the quantity otherwise disposed of with proper authority.

45.505-14 Reports of Government property.

(a) The contractor's property control system shall provide annually the total acquisition cost of Government property for which the contractor is accountable under each contract with each agency, including Government property at subcontractor plants and alternate locations. The following classifications (property classifications may be varied to meet individual agency needs) shall be reported:

(1) Land and rights therein.

(2) Other real property, including utility distribution systems, buildings, structures, and improvements thereto.

(3) Plant equipment.

(4) Special tooling.

(5) Special test equipment.

(6) Material.

(7) Agency peculiar property.

(b) The contractor shall report the information under paragraph (a) as directed by the contracting officer.

45.506 Identification.

(a) Upon receipt of Government property, the contractor shall promptly-

(1) Identify the property in accordance with agency regulations;

(2) Mark the property in accordance with this section; and

(3) Record the property in its property control records.

(b)(1) Except for the following, all Government property shall be marked with an indication of Government ownership:

(i) Items issued to individuals for use in their work (e.g., protective clothing or tool crib tools)

where adequate physical control is maintained over the items.

(ii) Property of a bulk type, or where its general nature of packing or handling precludes adequate marking.

(iii) Material that is commingled, as authorized by 45.507.

(iv) Where the property administrator agrees that marking is impractical.

(2) Exempted items shall be entered and described on the accountable property records.

(c)(1) In addition to marking with an indication of Government ownership, the following property shall be marked with a serial number in accordance with procedures approved by the property administrator:

(i) Special tooling.

(ii) Special test equipment.

(iii) Components of special test equipment that have an acquisition cost of \$5,000 or more and are incorporated in a manner that makes removal and reutilization feasible and economical.

(iv) Plant equipment.

(v) Accessory or auxiliary equipment associated with a specific item of plant equipment that is recorded on the property records, if necessary to assure return with the associated basic item.

(2) The contractor shall record assigned numbers on all applicable documents pertaining to the property control system.

(3) If the property is included in a standard agency registration system, the contractor may use the property's registration number as the serial number. The contractor should obtain the registration number through the property administrator from the owning agency.

(d) The markings in paragraphs (b) and (c) of this section shall be—(1) securely affixed to the property, (2) legible, and (3) conspicuous. Examples of appropriate markings are bar coding, decals, and stamping. If marking will damage the property or is otherwise impractical, the contractor shall promptly notify the property administrator and ask for the item to be exempted (see paragraph (b) of this section). Markings shall be removed or obliterated when Government property is sold, scrapped, or donated.

45.507 Segregation of Government property.

Government property shall be kept physically separate from contractor-owned property. However, when advantageous to the Government and consistent with the contractor's authority to use such property, the property may be commingled—

(a) When the Government property is special tooling, special test equipment, or plant equipment clearly identified and recorded as Government property;

(b) When approved by the property administrator in connection with research and development contracts;

(c) When material is included in a multicontract cost and material control system (however, see 45.505-3(f));

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(d) When (1) scrap of a uniform nature is produced from both Government-owned and contractor-owned material and physical segregation is impracticable, (2) scrap produced from Government-owned material is insignificant in consideration of the cost of segregation and control, or (3) Government contracts involved are fixed-price and provide for the retention of the scrap by the contractor; or

(e) When otherwise approved by the property administrator.

45.508 Physical inventories.

The contractor shall periodically physically inventory all Government property (except materials issued from stock for manufacturing, research, design, or other services required by the contract) in its possession or control and shall cause subcontractors to do likewise. The contractor, with the approval of the property administrator, shall establish the type, frequency, and procedures. These may include electronic reading, recording and reporting or other means of reporting the existence and location of the property and reconciling the records. Type and frequency of inventory should be based on the contractor's established practices, the type and use of the Government property involved, or the amount of Government property involved and its monetary value, and the reliability of the contractor's property control system. Type and frequency of physical inventories normally will not vary between contracts being performed by the contractor, but may vary with the types of property being controlled. Personnel who perform the physical inventory shall not be the same individuals who maintain the property records or have custody of the property unless the contractor's operation is too small to do otherwise.

45.508-1 Inventories upon termination or completion.

(a) *General.* Immediately upon termination or completion of a contract, the contractor shall perform and cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Government property applicable to the contract, unless the requirement is waived as provided in paragraph (b) below.

(b) *Exception.* The requirement for physical inventory at the completion of a contract may be waived by the property administrator when the property is authorized for use on a follow-on contract; *provided, that—*

(1) Experience has established the adequacy of property controls and an acceptable degree of inventory discrepancies; and

(2) The contractor provides a statement indicating that record balances have been transferred in lieu of preparing a formal inventory list and that the contractor accepts responsibility and accountability for those balances under the terms of the follow-on contract.

(c) *Listings for disposal purposes.* (Note: This paragraph (c) applies only to nonprofit organizations.)

(1) Standard items that have been modified may be

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PART 47

TRANSPORTATION

47.000 scope of part.

(a) This part prescribes policies and **procedures** for-

(1) Applying transportation and traffic management considerations in the acquisition of supplies; and

(2) Acquiring transportation or transportation-related services by contract methods other than **bills** of lading, transportation requests, transportation warrants, and similar transportation forms. Even though the FAR does not regulate the acquisition of transportation or transportation-related services when the bill of lading is the contract, this contract method is widely used and therefore, relevant guidance on the *use* of the bill of lading, particularly the Government bill of lading (GBL), is provided in this part.

(b) The definitions in this part have been condensed **from** statutory **definitions**. In case of inconsistency between the language of this part and the statutory requirements, the statute shall prevail.

47.001 Definitions.

“Carrier” or “commercial carrier” means a common carrier or a contract carrier.

“Common carrier,” as used in this **part**, means a person holding itself out to the general public to provide transportation for compensation.

“Contract carrier” means a person providing **transportation** for compensation under continuing agreements with one person or a limited number of persons.

“CONUS” or “Continental United States” means the **48** contiguous states and the District of Columbia

“F.o.b.” means free on board. This term is used in conjunction with a physical point to determine (a) the responsibility and basis for payment of freight charges and (b) unless otherwise agreed, the point at which title for goods passes to the buyer or consignee.

“F.o.b. origin” means free on board at origin; i.e., the seller or consignor places the goods on the conveyance by which they are *to be transported*. Unless the contract provides otherwise, cost of shipping and risk of loss are borne by the buyer or consignee.

“F.o.b. destination” means free on board at destination; i.e., the seller or consignor **delivers** the goods on seller’s or consignor’s conveyance at destination. Unless the contract provides otherwise, cost of shipping and risk of loss are borne by the seller or consignor.

“Freight” means supplies, goods, and transportable **property**.

“Shipment,” as used in this **part**, means freight transported or to be transported.

47.002 Applicability.

(a) All Government personnel concerned with the activities listed in subparagraphs (1) through (4) below shall follow the regulations in Part 47 as applicable:

(1) Acquisition of supplies.

(2) Acquisition of transportation and transportation-related services.

(3) Transportation assistance and **traffic** management.

(4) The making and administration of contracts under which payments are made from Government funds for (i) the transportation of supplies, (ii) transportation-related services, or (iii) transportation of contractor personnel and their personal belongings.

(b) Subpart 42.14, **Traffic** and Transportation Management, shall be used for administering **transportation** contracts, transportation-related contracts, and those **portions** of supply and other contracts that involve transportation.

SUBPART 47.1—GENERAL

47.101 Policies.

(a) The contracting officer shall obtain **traffic management** advice and assistance (see 47.105) in the consideration of transportation factors **required for—**

(1) Solicitations and awards;

(2) Contract administration, modification, and termination; and

(3) Transportation of property by the Government to and from contractors’ plants.

(b)(1) The preferred method of transporting supplies for the Government is by commercial carriers. However, Government-owned, leased, or chartered vehicles, aircraft, and vessels may be used if (i) they are available and not fully utilized, (ii) their use will result in substantial economies, and (iii) their use is in accordance with all applicable statutes, agency policies and regulations.

(2) If the three circumstances listed in subparagraph (b)(1) above apply, Government vehicles may be used for purposes such as-

(i) Local transportation of supplies between Government installations;

(ii) Pickup and delivery services that commercial carriers do not perform in connection with line-haul transportation;

(iii) Transportation of supplies to meet emergencies; and

(iv) Accomplishment of program objectives that cannot be attained by using commercial carriers.

(c) Agencies shall not accord preferential treatment to any mode of transportation or to any particular carrier either in awarding or administering contracts for the **acquisition** of supplies or in awarding contracts for the **acquisition** of transportation. (See Subparts 47.2 and 47.3 for situations in which the contracting officer is permitted to use specific modes of transportation.)

(d) Agencies shall place with small business concerns purchases and contracts for transportation and transportation-related services as prescribed in Part 19.

(e) Agencies shall comply with the Fly America Act, the Cargo Preference Act, and related statutes as prescribed in Subparts 47.4, Air Transportation by U.S.-Flag Carriers, and 47.5, Ocean Transportation by U.S.-Flag Vessels.

47.102 Transportation insurance.

(a) The Government generally (1) retains the risk of loss of and/or damage to its property that is not the legal liability of commercial carriers and (2) does not buy insurance coverage for its property in the possession of commercial carriers (40 U.S.C. 726). (See Part 28, Bonds and Insurance.)

(b) Under special circumstances the Government may, if such action is considered necessary and in the Government's interest, (1) buy insurance coverage for Government property or (2) require the carrier to (i) assume full responsibility for loss of or damage to the Government property in its possession and (ii) buy insurance to cover the carrier's assumed responsibility. The cost of this insurance to the carrier shall be part of the transportation cost. (The Secretary of the Treasury prescribes regulations regarding shipments of valuables in 31 CFR 261 and 262.)

(c)(1) If special circumstances dictate the need for the Government to buy insurance coverage, the contracting officer shall ascertain that (i) there is no statutory prohibition and (ii) funds for insurance are available.

(2) The contracting officer shall document the need and authorization for insurance coverage in the contract file.

47.103 Transportation Documentation and Audit Regulation (TDA).

(a) The United States Government bill of lading (GBL) generally shall be used for the transportation of property of the United States for which the Government pays the transportation charges directly to commercial carriers.

(b)(1) Regulations and procedures governing the GBL, documentation, payment, and audit of transportation services acquired by the United States Government are prescribed in 41 CFR 101-41, Transportation Documentation

and Audit. Included in this regulation, among others, is the limited authority for the use of commercial forms and procedures to acquire freight or express transportation for small shipments of a **recurring** nature when transportation costs do not exceed \$100.

(2) For **DOD** shipments, corresponding guidance is in Chapter 32 of the Defense Traffic Management Regulation (DTMR).

(c) Subsection 42.1403-2 prescribes regulations and procedures for the occasional use of contractor-prepaid commercial bills of lading for the transportation of supplies weighing not more than 1,000 pounds that are acquired by the Government on **f.o.b.** origin terms.

47.104 Government rate tenders under section 10721 of the Interstate Commerce Act.

47.104-1 Government freight.

(a) Common carriers subject to the jurisdiction of the Interstate Commerce Commission may under the provisions of 49 U.S.C. 10721 offer to transport persons or property for the account of the United States without charge or at reduced rates.

(b) Section 10721 rates are published in Government rate tenders and apply to shipments moving for the account of the Government; i.e., on-

(1) Government bills of lading;

(2) Commercial bills of lading endorsed to show that such bills of lading are to be exchanged for, or **converted** to, Government bills of lading at destination after delivery to the consignees; or

(3) Commercial bills of lading endorsed to show that total transportation charges are assignable to, and will be reimbursed by, the Government (see the clause at 52.247-1, Commercial Bill of Lading Notations).

(c) Government agencies may negotiate with carriers for additional or revised section 10721 rates in appropriate situations. Only qualified transportation officers shall carry out these negotiations. (See 47.105 for transportation assistance.) The following are examples of situations in which negotiations for additional or revised section 10721 rates may be appropriate:

(1) Volume movements are expected.

(2) Shipments will be made on a recurring basis between designated places, and substantial savings in transportation costs appear possible even though a volume movement is not involved.

(3) Transit arrangements are feasible and advantageous to the Government.

47.104-2 Fixed-price contracts.

(a) **F.o.b. destination.** Section 10721 quotations do not apply to shipments under fixed-price f.o.b. destination contracts (delivered price).

(b) **F.o.b. origin.** Under fixed-price f.o.b. origin con-

tracts, shipments normally shall be made on GBL's. However, if it is advantageous to the Government, the contracting officer may occasionally require the contractor to prepay the freight charges to a **specific** destination. In such cases, the contractor shall use a commercial bill of lading and be reimbursed for the direct and actual transportation cost as a separate item in the invoice. The clause at **52.247-1**, Commercial Bill of Lading Notations, will ensure that the Government in this type of arrangement obtains the benefit of section 10721 rates.

47.104-3 Cost-reimbursement **contracts**.

(a) The Interstate Commerce Commission has ruled that section 10721 rates may be applied to shipments other than those made by the Government if the total benefit accrues to the Government; i.e., the Government must pay the charges or directly and completely reimburse the party that initially bears the freight charges. Therefore, section 10721 rates may be used for shipments moving on commercial bills of lading in cost-reimbursement contracts under which the **transportation** costs are direct and allowable costs under the cost principles of Part 3 1.

(b) Section 10721 rates may be applied to the movement of household goods and personal effects of contractor employees who are relocated for the convenience and at the direction of the Government and whose total transportation costs are reimbursed by the Government.

(c) The clause at **52.247-1**, Commercial Bill of Lading Notations, will ensure that the Government receives the benefit of lower section 10721 **rates** in cost-reimbursement contracts as described in paragraphs (a) and (b) above.

(d) Contracting officers **shall**—

(1) Include in contracts a statement requiring the contractor to use carriers that offer acceptable service at reduced rates if available; and

(2) Ensure that contractors receive the name and location of the transportation **officer** designated to furnish support and guidance when using Government rate tenders under **47.104-5(b)**.

(e) Transportation officers shall—

(1) Advise and assist contracting officers and contractors: and

(2) Make available to contractors the names of carriers that provide service under section 10721 quotations, cite applicable rate tenders, and advise contractors of the statement that must be shown on the carrier's commercial bill of lading (see the clause at **52.247-1**, Commercial Bill of Lading Notations). ‘

47.104-4 Contract clause.

(a) The contracting **officer**, in order to ensure the application of section 10721 rates, shall insert the clause at **52.247-1**, Commercial Bill of Lading Notations, in solicitations and contracts when the contracts will **be**—

(1) Cost-reimbursement contracts, including those

that may involve the movement of household goods (see **47.104-3(b)**); or

(2) Fixed-price f.o.b. origin contracts (other than small purchases under Part 13) (see **47.104-2(b)** and **47.104-3**).

(b) The contracting officer may insert the clause at **52.247-1**, Commercial Bill of Lading Notations, in solicitations and contracts awarded within the small purchase limitations in **13.000** **when** it is contemplated that the delivery terms will be f.o.b. origin.

47.104-5 Citation of Government rate tenders.

When section 10721 rates apply, transportation officers or contractors, as appropriate, shall identify the applicable Government rate tender by endorsement on bills of lading, including—

(a) GBL's or commercial bills of lading to be converted to GBL's (see 41 CFR 101-41.303, Conversion of commercial bills of **lading** to GBL's); and

(b) Properly endorsed commercial bills of lading when transportation charges are reimbursable (see **47.104-2(b)** and **47.104-3**).

47.105 Transportation assistance.

(a) Civilian Government activities that do not have transportation officers, or otherwise need assistance on transportation matters, shall obtain assistance from (1) the GSA Regional Federal Supply Service Bureau that provides support to the activity or (2) the transportation element of the contract administration office designated **in** the contract.

(b) Military installations shall obtain transportation assistance from the **transportation** office of the contracting activity, unless another military activity has been designated as responsible for furnishing assistance, guidance, or data. Military transportation offices shall request needed additional aid from the appropriate area headquarters of the Military **Traffic** Management Command (**MTMC**).

SUBPART 47.2—CONTRACTS FOR TRANSPORTATION OR FOR TRANSPORTATION- RELATED SERVICES

47.200 Scope of subpart.

(a) This subpart prescribes procedures for the acquisition by sealed bid or negotiated contracts of—

(1) Freight transportation (including local drayage) from rail, motor (including bus), domestic water (including inland, coastwise, and intercoastal) carriers, and from freight forwarders; and

(2) Transportation-related services including but not limited to stevedoring, storage, packing, marking, and ocean freight forwarding.

(b) Except as provided in paragraph (c) below, this subpart does not apply **to**—

(1) The acquisition of **freight** transportation from (i) domestic or international air carriers and (ii) **international** ocean carriers (see Subparts 47.4 and 47.5);

(2) Freight transportation acquired by bills of lading;

(3) Freight transportation for which rates are negotiated under 49 U.S.C. 10721(b)(1); or

(4) Small purchases under Part 13.

(c) With appropriate modifications, the procedures in this subpart may be applied to the acquisition of freight transportation from the carriers listed in subparagraph (b)(1) above and passenger transportation from any carrier or mode.

(d) The procedures in this subpart are applicable to the transportation of household goods and personal effects of persons being relocated at Government expense except when acquired—

(1) Under the commuted rate schedules as required in the Federal Travel Regulation (41 CFR 101-7);

(2) By U.S. Government bill of lading (GBL); or

(3) By DOD under the Personal Property Management Regulation (DOD 4500.34R).

(e) Additional guidance for DOD acquisition of freight and passenger transportation is in the Defense Traffic Management Regulation.

47.201 Definitions.

“General **freight**,” as used in this subpart, means supplies, goods, and transportable property not encompassed in the definitions of “household goods” or “**office** furniture.”

“Household goods,” as used in this subpart, means personal property that belongs to a person and that person’s immediate family and **includes**, but is not limited to household furnishings, equipment and appliances, furniture, clothing, books, and similar property (see 41 CFR 101-7).

“Office furniture,” as used in this **subpart**, means furniture, equipment, fixtures, records, and other equipment and materials used in Government **offices**, hospitals, and similar establishments.

47.202 Presolicitation planning.

Contracting officers shall inform activities that plan to acquire transportation or transportation-related services of the applicable lead-time requirements, that is—

(a) The Service Contract Act of 1965 (SCA) requirement for submission of Standard Form 98, Notice of Intention to Make a Service Contract and Response to Notice, to the Department of Labor not less than the number of days prescribed by the Department of Labor before the issuance of an invitation for bid, request for proposal, or commencement of negotiations for any contract exceeding \$2,500 that may be subject to the SCA (see Subpart 22.10);

(b) The possible requirement to provide, during the solicitation period, time for prospective offerors or contractors to inspect origin and destination locations; or

(c) The possible requirement for inspection by agency personnel of prospective contractor facilities and equipment

47.203 Transportation term contracts.

(a) Transportation term contracts are indefinite delivery requirements contracts for transportation or for transportation-related services. They are particularly useful for local drayage and **office** relocations **within** a metropolitan area.

(b) Transportation term contracts shall contain **descriptions** of the services to be performed; rates and charges for these services; the geographical area of **coverage**; the term of the contract; and minimum or maximum order limitations by dollar amount, shipment size, or other criteria.

(c) If appropriate, the transportation term contract shall require the contractor to provide the services covered to any Government agency that issues an order for these services under the contract. If so—

(1) Agencies may place orders for transportation or for transportation-related services under existing term contracts without further consideration of competition, as these term contracts are awarded on a price-competitive basis; and

(2) Agency personnel shall ensure that the orders they place conform to the contract, including any minimum or maximum order limitations.

(d) Policies and procedures regarding the use of GSA term contracts for transportation or for transportation-related services by civilian executive agencies are prescribed in 41 CFR 101.40.109.

47.204 Single-movement contracts.

Single-movement contracts may be awarded for unique transportation services that are not otherwise available under carrier tariffs or covered by DOD or GSA contracts; e.g., special requirements at origin and/or destination.

47.205 Availability of term contracts and basic ordering agreements for transportation or for transportation-related services.

(a) All Government agencies may contract for transportation or for transportation-related services and execute basic ordering agreements (BOA’s) (see Subpart 16.7) unless agency regulations prescribe otherwise. However, it is generally more economical and **efficient** for most agencies to make use of term contracts and basic ordering agreements that have been executed by agencies that employ personnel experienced in contracting for transportation or for transportation-related services. The Department of Defense (DOD) and the General Services Administration (GSA) contract for transportation or for transportation-related services on behalf of other activities and agencies. For instance, GSA awards term contracts for services such as local drayage, office moves, and **ocean**-freight forwarding (see 47.105 for assistance).

and the designated facility is not covered by the line-haul transportation rate, the charges required to deliver the shipment to the point where 'the line-haul rate is applicable.

(d) When delivery is "f.o.b. origin, freight allowed," the basis on which transportation charges will be allowed, including the origin and destination from and to which transportation charges will be allowed.

(e) If f.o.b. origin offers only are desired, a statement that offers submitted on any other basis will be rejected as nonresponsive.

(f)(1) The methods of transportation used in evaluating offers. The Government normally uses land transportation by regulated common carriers between points in the 48 contiguous United States and the District of Columbia.

(2) The contracting officer shall insert the provision at 52.247-47, Evaluation-F.o.b. Origin, in solicitations that require prices f.o.b. origin for the purpose of establishing the basis on which offers will be evaluated.

(g)(1) When it is believed that prospective contractors are likely to include in f.o.b. origin offers a contingency to compensate for what may be an unfavorable routing condition by the Government at the time of shipment, the contracting officer may permit prospective contractors to state in offers a reimbursable differential that represents the cost of bringing the supplies to any f.o.b. origin place of delivery **specified** by the Government at the time of shipment (see the clause at 52.247-33, F.o.b. Origin, with Differentials).

(2) Following are situations that might impose on the contractor a substantial cost above "at plant" or "commercial shipping point" prices because of **Government-required** routings:

(i) The loading nature of the supplies; e.g., wheeled vehicles.

(ii) The different methods of shipment specified by the Government; e.g., **towaway**, driveaway, tri-level vehicle, or rail car, that may increase the contractor's cost in varying amounts for bringing the supplies to, or loading and bracing the supplies at, the specified place of delivery.

(iii) The contractor's f.o.b. origin shipping point is a port city served by United States inland, **coastwise**, or intercoastal water transportation, and the contractor would incur additional costs to make delivery f.o.b. a wharf in that city to accommodate water routing specified by the Government.

(iv) The contractor's plant does not have a private rail siding and in order to ship by Government-specified rail routing, the contractor would be required to deliver the supplies to a public siding or freight terminal and to load, brace, and install **dunnage** in tail cars.

47.305-4 F.o.b. destination solicitations.

(a) When preparing f.o.b. destination solicitations, the

contracting officer shall refer to 47.303 for the prescription of f.o.b. destination clauses relating to standard delivery terms.

(b) If f.o.b. destination only offers are desired, the solicitation shall state that offers submitted on a basis other than **f.o.b. destination** will be rejected as nonresponsive.

(c) When supplies will or may be purchased f.o.b. destination but inspection and acceptance will be at origin, the contracting officer shall insert in solicitations and contracts the clause at 52.247-48, F.o.b. Destination-Evidence of Shipment.

47.305-5 Destination unknown.

(a)(1) When destinations are unknown, solicitations **shall** be f.o.b. origin only.

(2) The contracting officer shall include in the contract file justifications for such solicitations.

(b)(1) When the exact destination of the supplies to be acquired is not known, but the general location of the users can be reasonably established, the acquiring activity shall designate tentative destinations for the purpose of computing transportation costs, showing estimated quantities for each tentative destination.

(2) The contracting officer shall insert in solicitations the provision at 52.247-49, Destination Unknown, when destinations are tentative and only for the purpose of evaluating offers.

(3) If it is necessary to control subsequent shipping weights, the solicitation shall state that subsequent shipments shall be made in carloads or truckloads (see the clause at 52.247-59, F.o.b. Origin-Carload and Truckload Shipments).

(c)(1) When exact destinations are not known and it is impracticable to establish tentative or general delivery places for the purpose of evaluating transportation costs, the contracting officer shall insert in solicitations the provision at 52.247-50, No Evaluation of Transportation Costs.

(2) The solicitation shall also state that the transportation costs of subsequent shipments must be controlled (see, for example, the clause at 52.247-61, F.o.b. Origin-Minimum Size of Shipments).

47.305-6 Shipments to ports and air terminals.

(a) When supplies are acquired on the basis of the delivery terms in 47.303-8 through 47.303-16, the solicitation shall include a requirement that the offeror furnish the Government the following information:

(1) When the delivery term is "f.a.s. vessel, port of shipment," "f.o.b. vessel, port of shipment," or "f.o.b. inland carrier, point of exportation," the required data shall include-

(i) A delivery schedule in number of units **and/or** long or short tons;

(ii) Maximum quantities available per shipment;

(iii) The quantity that can be made available for

loading to vessel per running day of 24 hours (if acquisition involves a commodity to be shipped in bulk);

(iv) The minimum **leadtime** required to make supplies available for loading to vessel; and

(v) The port and pier or other designation and, when applicable, the maximum draft of vessel (in feet) that can be accommodated.

(2) When the delivery term is: f.o.b. inland point, country of importation" or "f.o.b. designated air carrier's terminal, point of importation," the required data shall include-

(i) A delivery schedule in number of units **and/or** long or short tons;

(ii) Maximum quantities available per shipment; and

(iii) Other data appropriate to shipment by air carrier.

(3) When the delivery term is "ex dock, pier or warehouse, port of importation" or "c.&f. destination," the required data shall include-

(i) A delivery schedule in number of units and/or long or short tons;

(ii) Maximum quantities available per shipment; and

(iii) The number of containers or units that can **be** loaded in a car, truck, or other conveyance of the size normally used (specify type and size) for the commodity.

(4) When the delivery term is "c.i.f. destination," the required data shall include-

(i) The same as **specified in 47.305-6(a)(3)**; and

(ii) The amount and type of marine insurance coverage; e.g., whether the coverage is "With Average" or "Free of Particular Average" and whether it covers any special risks or excludes any of the usual risks associated with the specific commodity involved.

(5) When the delivery term is "f.o.b. designated air carrier's terminal, point of exportation," the required data shall include-

(i) A delivery schedule number of units, type of package, and individual weight and dimensions of each package;

(ii) Minimum **leadtime** required to make supplies available for loading into aircraft;

(iii) Name of airport and location to which shipment will be delivered; and

(iv) Other data appropriate to shipment by air carrier.

(b) When supplies are acquired for known destinations outside **CONUS** and originate within **CONUS**, the contracting officer shall, for transportation evaluation purposes, note in the solicitation the **CONUS** port of loading or point of exit (aerial or water) and the water port of

debarkation that serves the overseas destination.

(c) The contracting **officer** may also, for evaluation purposes, list in the solicitation other **CONUS** ports that meet the eligibility criteria compatible with the **nature** and quantity of the supplies, their destination, type of carrier required, and specified overseas delivery dates. This permits offerors that are geographically remote from the port that normally serves the overseas destination to be competitive as far as transportation costs are concerned.

(d) Unless logistics requirements limit the ports of loading to the ports listed in the solicitation, the solicitation **shall** state that-

(1) Offerors may nominate additional ports (**including** ports in Alaska and Hawaii) more favorably located **to their** shipping points; and

(2) These ports will be considered in the evaluation of offers if they possess all requisite capabilities of the listed ports in relation to the supplies being acquired

(e) When supplies are to be exported through **CONUS** I ports and offers are solicited on an f.o.b. origin or f.o.b. destination basis, the contracting officer shall insert in solicitations the provision at 52.247-51, Evaluation of Export Offers. The contracting officer shall use the provision with its-

(1) Alternate I, when the **CONUS** ports of export are DOD water terminals;

(2) Alternate II, when offers are solicited on an f.o. b. origin only basis; or

(3) Alternate III, when offers are solicited on an **f.o.b.** destination only basis.

(f)(1) When the supplies are to move in the Defense Transportation System (**DTS**) (see **47.301-3**), the contract shall specify that-

(i) A Transportation Control Movement Document (**TCMD**) must **be** dispatched to the appropriate DOD air or water clearance authority in accordance with MILSTAMP procedures for all shipments consigned to DOD air or water terminal transshipment points; and

(ii) An Export Release must be obtained for supplies to be transshipped via a water port of loading to overseas destinations, except for shipments for which an Export Release is not required, generally shipments of less than 10,000 pounds, (see paragraph 202024 of the Defense Traffic Management Regulation, AR 55-355, NAVSUP 4600.70, **MCO 4600.14A**, AFM 75-2, DLAR 4500.3).

(2) When shipments will be consigned to DOD air or water terminal transshipment points, the contracting officer shall insert in solicitations and contracts the clause at 52.247-52, Clearance and Documentation Requirements-Shipments to DOD Air or Water Terminal Transshipment Points.

(g) When a contract will not generate any shipments that require an Export Release, only the DOD **CONUS** ports

PART 47-TRANSPORTATION

47.306-1

(2) If transit credits apply, the contract shall state that the contractor shall ship the goods on prepaid **commercial** bills of lading, subject to reimbursement by the Government. The contracting officer shall ensure that this does not preclude a proper change in delivery terms under the Changes clause. The shipments move for the account and at the risk of the Government, as they become Government property at origin.

(3) The contractor shall show the transportation and transit charges as separate amounts on the invoice for each individual shipment. The amount to be reimbursed by the Government shall not exceed the amount quoted in the offer. Regulations and procedures regarding contractor prepaid transportation charges are prescribed in 42.1403-2.

(4) The contracting officer shall insert in solicitations and contracts the clause at 52.247-57, Transportation Transit Privilege Credits, when supplies are of such a nature, or when it is the custom of the trade, that offerors may have potential transit credits available and the Government may reduce transportation costs through the use of transit credits.

47.305-14 Mode of transportation.

Generally, solicitations shall not specify a particular mode of transportation or a particular carrier. If the use of particular types of carriers is necessary to meet program requirements, the solicitation shall provide that only offers involving the specified types of carriers will be considered. The contracting officer shall obtain all specifications for mode, route, delivery, etc., from the transportation office.

47.305-15 Loading responsibilities of contractors.

(a)(1) Contractors are responsible for loading, blocking, and bracing carload shipments as specified in standards published by the Association of American Railroads.

(2) The contracting officer shall insert in solicitations and contracts the clause at 52.247-58, Loading, Blocking, and Bracing of Freight Car Shipments, when supplies may be shipped in carload lots by rail.

(b) If the nature of the supplies or safety, environmental, or transportability factors require special methods for securing the supplies on the carrier's equipment, or if only a special mode of transportation or type vehicle is appropriate, the contracting officer shall include in solicitations detailed specifications that have been coordinated with the transportation office.

47.305-16 Shipping characteristics.

(a) *Required shipping weights.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-59, F.o.b. Origin-Carload and Truckload Shipments, when it is contemplated that they may result in f.o.b. origin contracts with shipments in carloads or truckloads. This will facilitate realistic freight cost evaluations of offers and ensure that contractors produce economical shipments of agreed size.

(b) *Guaranteed shipping characteristics.* (1) The contracting officer shall insert in solicitations and contracts, excluding those awarded under the small purchase procedures of Part 13, the clause at 52.247-60, Guaranteed Shipping Characteristics, when shipping and other characteristics are required to evaluate offers as to transportation costs. When all of the shipping characteristics listed in paragraph (a) of the clause at 52.247-60 are not required to evaluate offers as to transportation costs, the contracting officer shall delete the characteristics not required from the clause.

(2) The award document shall show the shipping characteristics used in the evaluation.

(c) *Minimum size of shipments.* When volume rates may apply, the contracting officer shall insert in solicitations and contracts the clause at 52.247-61, F.o.b. Origin-Minimum Size of Shipments.

(d) *Specific quantities unknown.* (1) When total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined, solicitations shall state that offers are to be submitted on the basis of delivery "f.o.b. origin" and/or "f.o.b. destination" and that offers will be evaluated on both bases.

(2) The contracting officer shall insert in solicitations and contracts the clause at 52.247-62, Specific Quantities Unknown, when total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined. This clause protects the interests of both the Government and the contractor during the course of the performance of the contract.

47.305-17 Returnable cylinders.

The contracting officer shall insert the clause at 52.247-66, Returnable Cylinders, in a solicitation and contract whenever the contract involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders.

47.306 Transportation factors in the evaluation of offers.

When evaluating offers, contracting officers shall consider transportation and transportation-related costs as well as the offerors' shipping and receiving facilities.

47.306-1 Transportation cost determinations.

When requesting the transportation officer to assist in evaluating offers, the contracting officer shall give the transportation officer all pertinent data, including the following information:

(a) A complete description of the commodity being acquired including packaging instructions.

(b) Planned date of award.

(c) Date of initial shipment.

(d) Total quantity to be shipped (including weight and cubic content, when appropriate).

- (e) Delivery schedule.
- (f) Contract period.
- (g) Possible use of transit privileges, including **stopoffs** for partial loading or unloading, or both.

47.306-2 Lowest overall transportation costs.

(a) For the evaluation of offers, the transportation **officer** shall give to the contracting **officer**, and the contracting officer shall use, the lowest available freight rates and related accessorial and incidental charges that (1) are in effect on, or become effective before, the expected date of the initial shipment and (2) are on file or published on the date of **the** bid opening.

(b) If rates or related charges become available after the bid opening or the due date of offers, they shall not be used in the evaluation unless they cover transportation for which no applicable rates or accessorial or incidental costs were in existence at the time of bid opening or due date of the offers.

47.306-3 Adequacy of loading and unloading facilities.

(a) When determining the transportation capabilities of an offeror, the contracting officer shall consider the type and adequacy of the offeror's shipping facilities, including **the** ability to consolidate and ship in carload or truckload lots.

(b) The contracting officer shall consider the type and adequacy of the consignee's receiving facilities to avoid shipping schedules **that** cannot be properly accommodated.

SUBPART 47.4—AIR TRANSPORTATION BY U.S.-FLAG CARRIERS

47.401 Definitions.

"Air freight forwarder" means an indirect air carrier that is responsible for the transportation of property from the point of receipt to the point of destination, and utilizes for the whole or any part of such transportation the services of a direct air carrier or its agent, or of another air freight forwarder.

"Gateway airport abroad" means the airport from which the traveler last embarks en route to the United States or at which the traveler **first** debarks incident to travel from the United States.

"Gateway airport in the United States" means the last U.S. airport from which the traveler's flight departs or the first U.S. airport at which the traveler's flight arrives.

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this subpart, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier" means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).

47-22 (FAC 90-20)

47.402 Policy.

Section 5 of **the** International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (**Fly America Act**) **requires that** Federal employees and their dependents, consultants, contractors, grantees, and others use U.S.-flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent service by these carriers is available.

47.403 Guidelines for implementation of the Fly America Act.

This section 47.403 is based on the Guidelines for Implementation of the Fly America Act (case number B-138942), issued by the Comptroller General of the United States on March 31, 1981.

47.403-1 Availability and unavailability of U.S.-flag air carrier service.

(a) If a U.S.-flag air carrier cannot provide the **international** air transportation needed or if the use of U.S.-flag air carrier service would not accomplish an agency's mission, foreign-flag air carrier service may be deemed necessary.

(b) U.S.-flag air carrier service is considered available even though-

(1) Comparable or a different kind of service can be provided at less cost by a foreign-flag air carrier;

(2) Foreign-flag air carrier service is preferred by, **or** is more convenient for, the agency or traveler; or

(3) Service by a foreign-flag air carrier can be paid for in excess foreign currency (unless U.S.-flag air **carriers** decline to accept excess or near excess foreign currencies for transportation payable only out of such monies).

(c) Except as provided in paragraph 47.403-1(a), U.S.-flag air carrier service shall be used for U.S. **Government**-financed commercial foreign air travel if service provided by U.S.-flag air carriers is available. In determining availability of a U.S.-flag air carrier, the following scheduling principles shall be followed unless their application would result in the last or first leg of travel to or from the United States being performed by a foreign-flag air carrier:

(1) U.S.-flag air carrier service available at point of origin shall be used to destination or, in the absence of direct or through service, to the farthest interchange point on a usually traveled route.

(2) When an origin or interchange point is not served by a U.S.-flag air carrier, foreign-flag air carrier service shall **be** used only to the nearest interchange point on a usually traveled route to connect with U.S.-flag air carrier service.

(3) When a U.S.-flag air carrier involuntarily reroutes the traveler via a foreign-flag air carrier, the foreign-flag air carrier may be used notwithstanding the availability of alternative U.S.-flag air carrier service.

(d) For travel between a gateway airport in the United States and a gateway airport abroad, passenger service by

phases, or **during** other recent comparable **production contracts**.

(ii) Which are awarded on the basis of competition.

(e) Value engineering incentive payments do not constitute profit or fee within the limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. **254(b)** (see **15.903(d)**).

(f) Generally, profit or fee on the instant contract should not be adjusted downward as a result of acceptance of a VECP. Profit or fee shall be excluded when calculating instant or future contract savings.

(g) In the case of contracts for items requiring an extended period of production (e.g., ship construction, major **system** acquisition), agencies may prescribe sharing of future contract savings on all future contract units to be delivered under contracts awarded for essentially the same item during the sharing period, even if the scheduled delivery date is outside the sharing period. For **engineering-development** and low-rate-initial-production contracts, the future sharing shall be on scheduled deliveries equal in **number** to the quantity required over the highest 36 consecutive months of planned production, based on planning or production documentation at the time the VECP is accepted.

(h) In the case of contracts for architect-engineer services, the contract shall include a separately priced line item for mandatory value engineering of the scope and level of effort required in the statement of work. The objective is to ensure that value engineering effort is applied to specified areas of the contract that offer opportunities for significant savings to the Government. There shall be no sharing of value engineering savings in contracts for architect-engineer services.

(i) Agencies shall establish procedures for funding and payment of the contractor's share of collateral savings and future contract savings.

48.103 Processing value engineering change **proposals**.

(a) Instructions to the contractor for preparing a VECP and submitting it to the Government are included in paragraphs (c) and (d) of the value engineering clauses prescribed in Subpart 48.2. Upon receiving a VECP, **the** contracting **officer** or other designated official shall promptly process and objectively evaluate the VECP in accordance with agency procedures and shall document the contract file with the rationale for accepting or rejecting the VECP.

(b) The contracting officer is responsible for accepting or rejecting the VECP within 45 days from its receipt by the Government. If the Government will need more time to evaluate the VECP, the contracting officer shall notify **the contractor** promptly in writing, giving the reasons and the anticipated decision date. The contractor may withdraw, in whole or in part, any VECP not accepted by the Government within the period specified in the **VECP**. Any VECP may be approved, in whole or in part, by a contract modification incorporating the VECP. Until the effective

date of the contract modification, the contractor shall perform in accordance with the existing contract. If the Government accepts **the** VECP, but properly rejects units subsequently delivered or does not receive units on which a savings share was paid the contractor shall reimburse the Government for the proportionate share of these payments. If the VECP **is** not accepted, the contracting officer shall provide the contractor with prompt written notification, explaining the reasons for rejection.

(c) The following Government decisions are not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. **601-613**):

(1) The decision to accept or reject a VECP

(2) *The* determination of collateral costs or collateral savings.

(3) The decision as to which of the sharing rates applies when Alternate II of the clause at 52.248-1, Value Engineering, is used.

48.104 Sharing arrangements.

48.104-1 Sharing acquisition savings.

(a) *Supply or service contracts*. (1) The sharing base for acquisition savings is normally the number of **affected** end items on contracts of the contracting office accepting the **VECP**. The sharing rates (Government/contractor) for net acquisition savings for supplies and services are based on the type of **contract**, the value engineering clause or alternate **used**, and the type of savings, as follows:

GOVERNMENT/CONTRACTOR SHARES OF NET ACQUISITION SAVINGS (figures in percent)

Contract Type	Sharing Arrangement			
	Incentive (voluntary)		Program requirement (mandatory)	
	Instant contract rate	COP current and future rate	Instant contract rate	Con-current and future contract rate
Fixed-price (other than incentive)	50/50	50/50	75/25	75/25
Incentive (fixed-price or cost)	*	50/50	*	75/25
Cost-reimbursement (other than incentive)*+	75/25	75/25	85/15	85/15

*Same sharing arrangement as the contract's profit or fee adjustment formula

**Includes cost-plus-award-fee contracts.

(2) Acquisition savings may be realized on the instant contract, concurrent contracts, and future contracts. The contractor is entitled to a percentage share (see subparagraph (1) above) of any net acquisition savings. Net acquisition savings result when the total of acquisition savings becomes greater than the total of Government costs and any negative instant contract savings. This may occur on the instant contract or it may not occur until reductions have been negotiated on concurrent contracts or until future contract savings are calculated, either through lump-sum payment or as each future contract is awarded.

I (i) When the instant contract is not an incentive contract, the contractor's share of net acquisition savings is calculated and paid each time such savings are realized. This may occur once, several times, or, in rare cases, not at all.

(ii) When the instant contract is an incentive contract, the contractor shares in instant contract savings through the contract's incentive structure. In calculating acquisition savings under incentive contracts, the contracting officer shall add any negative instant contract savings to the target cost or to the target price and ceiling price and then offset these negative instant contract savings and any Government costs against concurrent and future contract savings.

(3) The contractor **shares** in the savings on all affected units scheduled for delivery during the sharing period (but see 48.102(g)). The contractor is responsible for maintaining, for 3 years after **final** payment on the contract under which the VECP was accepted, records adequate to identify the first delivered unit incorporating the applicable VECP.

(4) Contractor shares of savings are paid through the contract under which the VECP was accepted. On incentive contracts, the contractor's share of concurrent and future contract savings and of collateral savings shall be paid as a separate **firm-fixed-price** contract line item on the instant contract.

(5) Within 3 months after concurrent contracts have been modified to reflect price reductions attributable to use of the VECP, the contracting officer shall modify the instant contract to provide the contractor's share of savings.

(6) The contractor's share of future contract savings may be paid as subsequent contracts are awarded or in a lump-sum payment at the time the VECP is accepted. The lump-sum method may be used only if the contracting officer has established that this is the best way to proceed and the contractor agrees. The contracting officer ordinarily shall make calculations as future contracts are awarded and, within 3 months after award, modify the instant contract to provide the contractor's share of the savings. For future contract savings calculated under the optional **lump-sum** method, the sharing base is

an estimate of the number of items that the contracting officer will purchase for delivery during the sharing period. In deciding whether or not to use the more convenient lump-sum method for an individual VECP, the contracting officer shall consider-

(i) The accuracy with which the number of items to be delivered during the sharing period can be estimated and the probability of actual production of the projected quantity;

(ii) The availability of funds for a **lump-sum** payment; and

(iii) The administrative expense of amending the instant contract as future contracts are awarded.

(b) **Construction contracts.** Sharing on construction contracts applies only to savings on the instant contract and to collateral savings. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (1) 45 percent for fixed-price contracts or (2) 75 percent for **cost-reimbursement** contracts. **Value** engineering sharing does not apply to incentive construction contracts.

(c) **Architect-engineering contracts.** There shall be no sharing of value engineering savings in contracts for architect-engineer services.

48.104-2 Sharing collateral savings.

(a) The Government shares collateral savings with the contractor, unless the head of the contracting activity has determined that the cost of calculating and tracking collateral savings will exceed the benefits to be derived (see 48.201(e)).

(b) The contractor's share of collateral savings is 20 percent of the estimated savings to be realized during an average year of use but shall not exceed (1) the contract's **firm-fixed-price**, target price, target cost, or estimated cost, at the time the VECP is accepted, or (2) \$100,000, whichever is greater. In **determining** collateral savings, the **contracting** officer shall consider any degradation of performance, service life, or capability. (See 48.104-1(a)(4) for payment of collateral savings through the instant contract.)

48.104-3 Sharing alternative—no-cost settlement method.

To minimize the administrative costs for both parties when there is a known continuing requirement for the unit, consideration should be given to the settlement of a VECP submitted against the VE Incentive clause of the contract at **no** cost to either party. Under this method of settlement, the contractor would keep all of the savings on the instant contract, and all savings on its concurrent contracts only. The Government would keep all savings resulting from **concurrent** contracts placed on other sources, savings from all **future** contracts, and all collateral savings. Use of this method must be by mutual agreement of both parties for individual VECP's.

- 52.246-15 Certificate of Conformance.
- 52.246-16** Responsibility for Supplies. .
- 52.246-17 Warranty of Supplies of a Noncomplex Nature.
- 52.246-18** Warranty of Supplies of a Complex Nature.
- 52.24619 Warranty of Systems and Equipment under
Performance Specifications or Design
criteria.
- 52.246-20 Warranty of Services.
- 52.24621 Warranty of Construction.
- 52.246-22 Reserved.
- 52.246-23 Limitation of Liability.
- 52.246-24 Limitation of Liability-High-Value Items.
- 52.246-25 Limitation of Liability-Services.
- 52.247-1 Commercial Bill of Lading Notations.
- 52.247-2 Permits, Authorities, or Franchises.
- 52.247-3 Capability to Perform a Contract for the
Relocation of a Federal Office.
- 52.247-4** Inspection of Shipping and Receiving
Facilities.
- 52.247-5 Familiarization with Conditions.
- 52.247-6 Financial Statement.
- 52.247-7 Freight Excluded.
- 52.247-8 Estimated Weights or Quantities Not
Guaranteed.
- 52.247-9 Agreed Weight-General Freight.
- 52.247-10 Net Weight-General Freight.
- 52.247-11 Net Weight-Household Goods or **Office**
Furniture.
- 52.247-12 Supervision, Labor, or Materials.
- 52.247-13 Accessorial Services-Moving Contracts.
- 52.247-14 Contractor Responsibility for Receipt of
Shipment.
- 52.247-15 Contractor Responsibility for Loading and
Unloading.
- 52.247-16 Contractor Responsibility for Returning
Undelivered Freight.
- 52.247-17 Charges.
- 52.247-18 Multiple Shipments.
- 52.247-19 Stopping in Transit for Partial Unloading.
- 52.247-20 Estimated Quantities or Weights for Evaluation
of Offers.
- 52.247-21 Contractor Liability for Personal Injury and/or
Property Damage.
- 52.247-22 Contractor Liability for Loss of **and/or** Damage
to Freight other than Household Goods.
- 52.247-23 Contractor Liability for Loss of **and/or** Damage
to Household Goods.
- 52.247-24 Advance Notification by the Government.
- 52.247-25 Government-Furnished Equipment with or
without Operators.
- 52.247-26 Government Direction and Marking.
- 52.247-27 Contract not Affected by Oral Agreement.
- 52.247-28 Contractor's Invoices.
- 52.247-29 F.o.b. Origin.
- 52.247-30 F.o.b. Origin, Contractor's Facility.
- 52.247-31 F.o.b. Origin, Freight Allowed.
- 52.247-32 F.o.b. Origin, Freight Prepaid.
- 52.247-33 F.o.b. Origin, **with** Differentials.
- 52.247-34 F.o.b. Destination.
- 52.247-35 **F.o.b.** Destination, within Consignee's
Premises.
- 52.247-36 **F.a.s.** Vessel, Port of Shipment.
- 52.247-37 F.o.b. Vessel, Port of Shipment.
- 52.247-38 **F.o.b.** Inland Carrier, Point of Exportation.
- 52.247-39 **F.o.b.** Inland Point, Country of Importation.
- 52.247-40** Ex Dock, Pier, or Warehouse, Port of
Importation.
- 52.24741 C. & f. Destination.
- 52.24742 C.i.f. Destination.
- 52.24743 **F.o.b.** Designated Air Carrier's Terminal, Point
of Exportation.
- 52.24744 **F.o.b.** Designated Air Carrier's Terminal, Point
of Importation.
- 52.24745 **F.o.b.** Origin and/or **F.o.b.** Destination
Evaluation.
- 52.24746 Shipping Point(s) Used in Evaluation of F.o.b.
Origin Offers.
- 52.24747 Evaluation-F.o.b. Origin.
- 52.24748 F.o.b. Destination-Evidence of Shipment.
- 52.24749 Destination Unknown.
- 52.247-50** No Evaluation of Transportation Costs.
- 52.247-51 Evaluation of Export Offers.
- 52.247-52** Clearance and Documentation Requirements
Shipments to DOD Air or Water Terminal
Transshipment Points.
- 52.247-53 Freight Classification Description.
- 52.247-54 Diversion of Shipment under F.o.b. Destination
Contracts.
- 52.247-55 **F.o.b.** Point for 'Delivery of **Government-**
Furnished Property.
- 52.247-56 Transit Arrangements.
- 52.247-57 Transportation Transit Privilege Credits.
- 52.247-58 Loading, Blocking, and Bracing of Freight Car
Shipments.
- 52.247-59 **F.o.b.** Origin-Carload and Truckload
Shipments.
- 52.247-60** Guaranteed Shipping Characteristics.
- 52.24761 **F.o.b.** Origin-Minimum Size of Shipments.
- 52.247-62** Specific Quantities Unknown.
- 52.247-63** Preference for U.S.-Flag Air Carriers.
- 52.24764 Preference for Privately Owned U.S.-Flag
Commercial Vessels.
- 52.24765 **F.o.b.** Origin, Prepaid Freight-Small Package
Shipments.
- 52.247-66** Returnable Cylinders.
- 52.248-1 Value Engineering.
- 52.248-2 Value Engineering-Architect-Engineer.
- 52.248-3 Value Engineering-Construction.
- 52.249-1 Termination for Convenience of the
• Government (F&d-Price) (Short Form).

52.249-2 Termination for Convenience of the Government (Fixed-price).
 52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).
 52.249-4 Termination for Convenience of the Government (Services) (Short Form).
 52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).
 52.249-6 Termination (Cost-Reimbursement).
 52.249-7 Termination (~~Fixed-Price~~ Architect-Engineer).
 52.249-8 Default (Fixed-Price Supply and Service).
 52.249-9 Default (Fixed-Price Research and Development).
 52.249-10 Default (Fixed-Price Construction).
 52.249-11 Termination of Work (Consolidated Facilities or Facilities Acquisition).
 52.249-12 Termination (Personal Services).

52.249-13 Failure to Perform.
 52.249-14 Excusable Delays.
 52.250-1 Indemnification Under Public Law **85-804**.
 52.251-1 Government Supply Sources.
 52.251-2 Interagency Fleet Management System (**IFMS**) Vehicles and Related Services.
 52.252-1 Solicitation Provisions Incorporated by Reference.
 52.252-2 Clauses Incorporated by Reference.
 52.252-3 Alterations in Solicitation.
 52.252-4 Alterations in Contract.
 52.252-5 Authorized Deviations in Provisions.
 52.252-6 Authorized Deviations in Clauses.
 52.253-1 Computer Generated Forms.

SUBPART 52.3—PROVISION AND CLAUSE MATRIX

52.300 Scope of subpart.
 52.301 Solicitation provisions and contract clauses (**Matrix**).

PART 52

SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.000 Scope of part.

This part (a) gives instructions for using provisions and clauses in solicitations and/or contracts, (b) sets forth the solicitation provisions and contract clauses prescribed by this regulation, and (c) presents a matrix listing the FAR provisions and clauses applicable to each principal contract type and/or purpose (e.g., fixed-price supply, cost-reimbursement research and development).

SUBPART 52.1—INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

52.100 Scope of subpart.

This subpart (a) gives instructions for using Part 52, including the explanation and use of provision and clause numbers, prescriptions, prefaces, and the matrix; (b) prescribes procedures for incorporating, identifying, and modifying provisions and clauses in solicitations and contracts, and for using alternates; and (c) describes the derivation of FAR provisions and clauses.

52.101 Using Part 52.

(a) *Definitions.* “Alternate” means a substantive variation of a basic provision or clause prescribed for use in a defined circumstance. It (1) adds wording to, (2) deletes wording from, or (3) substitutes specified wording for a portion of the basic provision or clause. The alternate version of a provision or clause is the basic provision or clause as changed by the addition, deletion, or substitution (see 52.105(a)).

“Contract clause” or “clause” means a term or condition used in contracts or in both solicitations and contracts, and applying after contract award or both before and after award.

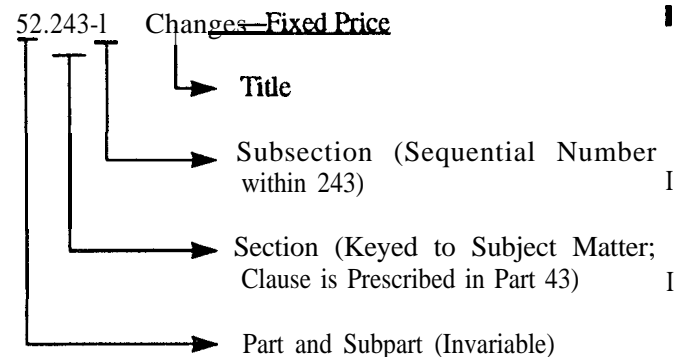
“Modification,” as used in this subpart, means a minor change in the details of a provision or clause that is specifically authorized by the FAR and does not alter the substance of the provision or clause (see 52.104).

“Solicitation provision” or “provision” means a term or condition used only in solicitations and applying only before contract award.

“Substantially as follows” or “substantially the same as,” when used in the prescription and preface of a provi-

sion or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition; *provided*, that the variation includes the salient features of the FAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

(b) *Numbering.* (1) *FAR provisions and clauses.* Subpart 52.2 sets forth the texts of all FAR provisions and clauses, **each** in its own separate subsection. The subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR. Each FAR provision or clause is uniquely identified. All FAR provision and clause numbers begin with “52.2,” **since** the texts of all FAR provisions and clauses appear in Subpart 52.2. The next two digits of the provision or clause number correspond to the number of the FAR subject part in which the provision or clause is prescribed. The FAR provision or clause number is then completed by a hyphen and a sequential number assigned within **each** section of Subpart 52.2. The following example illustrate-s the makeup of the FAR provision or clause number:



(2)(i) *Provisions or clauses that supplement the FAR.* Provisions or clauses that supplement the FAR aft?-

(A) Prescribed and included in authorized agency acquisition regulations issued within an agency to satisfy the specific needs of the agency as whole;

(B) Prescribed and included in a regulation issued by a suborganization of an agency to satisfy the needs of that particular suborganization; or

(C) Developed for use at a suborganizational

level of an agency, not meant for repetitive use, but intended to meet the needs of an individual acquisition and, thus, impractical to include in either an agency or suborganization acquisition regulation. (See 1.301(c).)

(ii) Supplemental provisions or clauses published in agency acquisition regulations shall be in full text and the prescription for the use of each shall be included. Supplemental provisions or clauses published in agency acquisition regulations shall be numbered in the same manner in which FAR provisions and clauses are numbered except that—

(A) If it is included in an agency acquisition regulation that is published in the Federal Register and is codified in Title 48, **Code of Federal Regulations** (48 CFR), the number shall be preceded by the chapter number within 48 CFR assigned by the CFR **staff**; and

(B) The sequential number shall be “70” or a higher number (see 1.303).

(iii) The sequential number at **the** end of the **num-**ber of a provision or clause that supplements the FAR, like its counterpart at the end of any FAR provision or clause number, indicates the subsection location of the provision or clause in Subpart 52.2 of the agency acquisition regulation that contains its full text. If, for example, an agency acquisition regulation contains only one provision followed by only one clause supplementing the FAR in its section 52.236 (Construction and Architect-Engineer Contracts), then the sequential numbers would be “70” for the provision and “71” for the clause.

(c) **Prescriptions.** Each provision or clause in Subpart 52.2 is prescribed at that place in the FAR text where the subject matter of the provision or clause receives its primary treatment. The prescription includes all conditions, requirements, and instructions for using the provision or clause and its alternates, if any. The provision or clause may be referred to in other FAR locations.

(d) **Prefaces.** Within Subpart 52.2, each provision or clause is prefaced with (1) a cross-reference to the location in the FAR subject text that prescribes its use, and (2) directions for inserting it in solicitations and/or contracts.

(e) **Matrix**

(1) The matrix in Subpart 52.3 contains a column for each principal type and/or purpose of contract (e.g., fixed-price supply, cost reimbursement research and development). The matrix lists the—

- (i) Required solicitation provisions;
 - (ii) Required-when-applicable solicitation provisions;
 - (iii) Optional solicitation provisions;
 - (iv) Required contract clauses;
 - (v) Required-when-applicable contract clauses;
- and

(vi) **Optional contract clauses.**

(2) For each provision or clause listed, the matrix provides information on—

(i) Whether incorporation by reference is or is not **authorized**;

(ii) The section of the Uniform Contract Format (**UCF**) in which it is to be located, if it is used in an acquisition that is subject to the UCF;

(iii) Its number;

(iv) The citation of the FAR text that prescribes its use; and

(v) Its title.

(3) Since the matrix does not provide sufficient information to determine the applicability of a provision or clause in the “required-when-applicable” and “optional” categories, contracting officers shall refer to the FAR text (cited in **the** matrix) that prescribes its use.

(4) The FAR matrix may be reproduced at agency levels, and at subordinate levels, for the purpose of supplementing it with agency-developed provisions and clauses. The resulting consolidated matrices may be included in agency acquisition regulations.

(f) **Dates.** Since they are subject to revision from time to time, all provisions, clauses, and alternates are dated; e.g., @EC 1983). To avoid questions concerning which version of any provision, clause, or alternate is operative in any given solicitation or contract, its date shall be included whether it is incorporated by reference or in full **text**.

52.102 Incorporating provisions and clauses.

52.102-1 Incorporation by reference.

(a) Except as specified in 52.102-2, provisions and clauses may be incorporated by reference in solicitations and/or contracts if they are prescribed in—

(1) The FAR and are authorized to be incorporated by reference (see Subpart 52.3); or

(2) An agency acquisition regulation published by—

(i) The Secretary of Defense for use throughout **the** Department of Defense (DOD); or

(ii) The head of an agency outside the DOD for agency-wide use.

(b) The provisions and clauses referred to in 52.102-1(a) should be incorporated by reference to the maximum practical extent, rather than being incorporated in full text, even if they (1) are used with one or more alternates or on an optional basis, (2) are prescribed on a “substantially as follows” or “substantially *the same as*” basis; *provided*, that they are used verbatim, or (3) require modification or the insertion by the Government of fill-in material (see 52.104). However, the contracting officer, upon request, shall provide the full text of any provision or clause incorporated by reference.

(c) Provisions or clauses may not be incorporated by

cation or requirements. If, despite reasonable efforts, the Contractor determines that the continuation of work under this contract is not practicable because of the change in security classification or requirements, the Contractor shall notify the Contracting Officer in writing. Until resolution of the problem is made by the Contracting Officer, the Contractor shall continue safeguarding all classified material as required by this contract.

(f) After receiving the written notification, the Contracting Officer shall explore the circumstances surrounding the proposed change in security classification or requirements, and shall endeavor to work out a mutually satisfactory method whereby the Contractor can continue performance of the work under this contract.

(g) If, 15 days after receipt by the Contracting Officer of the notification of the Contractor's stated inability to proceed, (1) the application to this contract of the change in security classification or requirements has not been withdrawn, or (2) a mutually satisfactory method for continuing performance of work under this contract has not been agreed upon, the Contractor may request the Contracting Officer to terminate the contract in whole or in part. The Contracting Officer shall terminate the contract in whole or in part, as may be appropriate, and the termination shall be deemed a termination under the terms of the Termination for the Convenience of the Government clause.

(R 7402.24, clause paragraphs (e), (f),
and (g) 1971 APR)

Alternate II (APR 1984). If employee identification is required for security or other reasons in a construction contract or architect-engineer contract, add the following paragraph (e) to the basic clause:

(e) The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer, for cancellation upon the release of any employee. When required by the Contracting Officer, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

52.204-3 Taxpayer Identification.

As prescribed in 4.904, insert the following provision:

TAXPAYER IDENTIFICATION (MAR 1994)

(a) Definitions.

"Common parent" as used in this solicitation provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

"Corporate status," as used in this solicitation provision, means a designation as to whether the offeror is a corporate entity, an unincorporated entity (e.g., sole proprietorship or

partnership), or a corporation providing medical and health care services.

"Taxpayer Identification Number (TIN)," as used in this solicitation provision, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

(b) All offerors are required to submit the information required in paragraphs (c) through (e) of this solicitation provision in order to comply with reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the Internal Revenue Service (IRS). If the resulting contract is subject to the reporting requirements described in FAR 4.903, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) Taxpayer Identification Number (TIN).

☐ TIN: _____

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of a Federal, state, or local government;

☐ Other. State basis. _____

(d) Corporate Status.

☐ Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

☐ Other corporate entity;

☐ Not a corporate entity:

☐ Sole proprietorship

☐ Partnership

☐ Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(e) Common Parent.

☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this clause.

☐ Name and TIN of common parent:

Name _____

TIN _____

(End of provision)

52.205 **Reserved.**

52.206 **Reserved.**

52.207-1 Notice of Cost Comparison (Sealed-Bid).

As prescribed in 7.305(a), insert the following provision:

NOTICE OF COST COMPARISON
(SEALED-BID) (FEB 1993)

I (a) This solicitation is part of a Government cost comparison to determine whether accomplishing the specified work under contract or by Government performance is more economical. If Government performance is determined to be more economical, this solicitation will be canceled and no contract will be awarded.

(b) The Government's cost estimate for performance by the Government will be based on the work statement in this solicitation and will be submitted by designated agency personnel to the Contracting Officer in a sealed envelope not later than the time set for bid opening. At the public bid opening, the Contracting Officer will open the bids and the envelope containing the cost estimate for Government performance and announce the result. This announcement will be based on an initial comparison of the cost of Government performance with the cost of contract performance, as indicated on the cost comparison form.

(c) The abstract of bids, completed cost comparison form, and detailed data supporting the cost estimate for Government performance will be made available to interested parties for review for a period of _____ *[insert a number from 15 to 30, depending on the complexity of the matter (see 7.306(a)(1)(iv))]* working days, beginning with the date the documents are available to interested parties. The Government will not make a final determination either for contract or Government performance during this period. During this period, directly affected parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost comparison result under the agency appeals procedures. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to decisions regarding selection of one bidder in preference to another. Agency determinations under the appeals procedure shall be final.

(d) After evaluation of bids and resolution of any requests under the appeals procedure, the Contracting Officer will either award a contract or cancel this solicitation. The completed cost comparison analysis will be made available to interested parties.

(e) A cost estimate for Government performance is considered a bid for purposes of this solicitation's Late Modifications of Bids or Withdrawal of Bids provision, and a late modification that displaces an otherwise low cost estimate for Government performance shall not be considered.

(End of provision)

52.207-2 Notice of Cost Comparison (Negotiated).

As prescribed in 7.305(b), insert the following provision:

NOTICE OF COST COMPARISON
(NEGOTIATED) (FEB 1993)

I (a) This solicitation is part of a Government cost comparison to determine whether accomplishing the specified work under contract or by Government performance is more economical. If Government performance is determined to be more economical, this solicitation will be canceled and no contract will be awarded.

(b) The Government's cost estimate for performance by the Government will be based on the work statement in this solicitation and will be submitted by designated agency personnel to the Contracting Officer in a sealed envelope not later than the time set for receipt of initial proposals.

(c) After completion of proposal evaluation, negotiation, and selection of the most advantageous proposal, the Contracting Officer, in the presence of the preparer of the cost estimate for Government performance, will open the sealed cost estimate envelope. These officials will make a cost comparison before public announcement. Depending on whether the cost comparison result favors performance under contract or Government performance, the procedure in either subparagraph (1) or (2) following applies:

(1) If the result of the cost comparison favors performance under contract and administrative approval is obtained, the Contracting Officer will award a contract and publicly reveal the completed cost comparison form showing the cost estimate for Government performance, its detailed supporting data, and the Contractor's name. However, this award is conditioned on the offer remaining the more economical alternative after (i) completion of a public review period of *[insert a numeral from 15 to 30, depending upon the complexity of the matter (see 7.306(b)(3))]* working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) of this section). The Government assumes no liability for costs incurred during the periods specified in (i) and (ii). The Contracting Officer will then either notify the Contractor in writing that it may proceed with performance of the contract or will cancel the contract at no cost to the Government.

(2) If the result of the cost comparison favors Government performance, the Contracting Officer will publicly disclose this result, the completed cost comparison form and its detailed supporting data, and the price of the offer most advantageous to the Government. After (i) completion of a public review period of *[insert a numeral from 15 to 30, depending upon the complexity of the matter (see 7.306(b)(3))]* working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) of this section), the Contracting Officer will either cancel this solicitation or award a contract, as appropriate.

(d) During the public review period, directly affected I

port of the preparation or submission of an offer for a Government contract by that offeror. An independent Contractor is not a marketing consultant when rendering -

I

- (i) Services excluded in FAR 37.204;
- (ii) Routine engineering and technical services (such as installation, operation, or maintenance of systems, equipment, software, components, or facilities);
- (iii) Routine legal, actuarial, auditing, and accounting services; or
- (iv) Training services.

(2) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An individual or firm that employs, retains, or engages contractually one or more marketing consultants in connection with a contract, shall submit to the contracting officer, with respect to each marketing consultant, the certificates described below, if the individual or firm is notified that it is the apparent successful offeror.

(c) The certificate must contain the following:

(1) The name of the agency and the number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the marketing consultant.

(3) The name, address, and telephone number of a responsible officer or employee of the marketing consultant who has personal knowledge of the marketing consultants involvement in the contract.

(4) A description of the nature of the services rendered by or to be rendered by the marketing consultant.

(5) The name, address, and telephone number of the client or clients, and the name of a responsible officer or employee of the marketing consultant who is knowledgeable about the services provided to such client(s), and a description of the nature of the services rendered to such client(s), if, based on information provided to the Contractor by the marketing consultant, any marketing consultant is rendering or, in the 12* months preceding the date of the certificate, has rendered services respecting the same subject matter of the instant solicitation, or directly relating to such subject matter, to the Government or any other client (including any foreign government or person).

* If approved by the head of the contracting activity, this period may be increased up to 36 months.

(6) A statement that the person who signs the certificate for the prime Contractor has informed the marketing consultant of the existence of Subpart 9.5 and Office

of Federal Procurement Policy Letter 89-1.

(7) The signature, name, title, employer's name, address, and telephone number of the persons who signed the certificates for both the apparent successful offeror and the marketing consultant.

(d) In addition, the apparent successful offeror shall forward to the Contracting Officer a certificate signed by the marketing consultant that the marketing consultant has been told of the existence of Subpart 9.5 and Office of Federal Procurement Policy Letter 89-1, and the marketing consultant has made inquiry, and to the best of the consultant's knowledge and belief, the consultant has provided no unfair competitive advantage to the prime Contractor with respect to the services rendered or to be rendered in connection with the solicitation, or that any unfair competitive advantage that, to the best of the consultant's knowledge and belief, does or may exist, has been disclosed to the offeror.

(e) Failure of the offeror to provide the certifications may result in the offeror being determined ineligible for award. Misrepresentation of any fact may result in the assessment of penalties associated with false certifications or such other provisions provided for by law or regulation.

(End of provision)

52.209-8 Organizational Conflicts of Interest Certificate—Advisory and Assistance Services.

As prescribed in 9.507-1(c), insert the following provision:

ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATE-ADVISORY AND ASSISTANCE SERVICES (NOV 1991)

(a) "Organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An offeror notified that it is the apparent successful offeror shall provide the certificate described in paragraph (c) of this provision.

(c) The certificate must contain the following:

(1) Name of the agency and the number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the apparent successful offeror.

(3) A description of the nature of the services rendered by or to be rendered on the instant contract.

(4) The name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12*

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months preceding the date of the certification. services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be **included**, if applicable.

- If approved by the head of the **contracting** activity, **this period** may be **increased** up to 36 months.

(5) A statement that the person who signs the **certificate** has made inquiry and that, to the best of his or **her** knowledge and belief, no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract, or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated in writing to the Contracting Officer or his or her representatives.

(6) **The** signature, name, employer's name, address, and telephone number of the person who signed the certificate.

(d) Failure of the offeror to provide the certification may result in the offeror being determined ineligible for award. Misrepresentation of any fact may result in the assessment of penalties associated with false certifications or such other provisions provided for by law or regulation.

(End of provision)

52.210-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in 10.011(a), insert the following provision:

AVAILABILITY OF SPECIFICATIONS LISTED IN
THE GSA INDEX OF FEDERAL SPECIFICATIONS,
STANDARDS AND COMMERCIAL ITEM
DESCRIPTIONS (MAR 1994)

(a) A single copy of each specification cited in this solicitation is available without charge from the GSA Federal Supply Service Bureau Specifications Section (3FBP-W), 470 East L'Enfant Plaza, SW., Suite 8100, Washington, DC 20407 (Tel. 202-755-0325 or 755-0326), or from any of the General Services Administration Business Service Centers which are located in Boston, MA; New York, NY, Philadelphia, PA; Atlanta, GA; Kansas City, MO; and Fort Worth, TX. Additional copies may be purchased from the GSA Specifications Section in Washington, D.C.

(b) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions may be purchased from

the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(End of provision)

52.210-2 Availability of Specifications Listed in the DOD Index of Specifications and Standards (DODISS).

As prescribed in 10.011(b), insert the following provision:

AVAILABILITY OF SPECIFICATIONS LISTED IN
THE DOD INDEX OF SPECIFICATIONS AND
STANDARDS (DODISS) (MAR 1994)

Single copies of specifications cited in this solicitation may be obtained by submitting a written request to the supply point listed below. The request must contain the title of the specification, its number, date, applicable amendment(s), and the solicitation or contract number. A telephone order entry system is available with the use of a touch tone telephone. A Customer Number is required to use this system and may be obtained by written request to the address listed below or by telephone (215-697-2179). In case of urgency, telegraphic requests are acceptable. Voluntary standards, which are not available to offerors and contractors from Government sources, may be obtained from the organization responsible for their preparation, maintenance, or publication.

Standardization Document
Order Desk, Building 4, Section D
700Robbins Avenue
Philadelphia, PA 19111-5094

Facsimile No. 215-697-2978

Telephone Order Entry System (TOES) Numbers
215-697-1187 through and including 215-697-1197

(End of provision)

52.210-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in 10.011(c), insert a provision substantially the same as the following:

AVAILABILITY OF SPECIFICATIONS NOT LISTED
IN THE GSA INDEX OF FEDERAL SPECIFICATIONS,
STANDARDS AND COMMERCIAL ITEM
DESCRIPTIONS (JUN 1988)

The specifications cited in this solicitation may be obtained from:

(Activity) _____

(Complete address) _____

(Telephone number) _____

(Person to be contacted) _____

paragraph (c)(3) of this clause, unless a statement substantially as follows accompanies such copyright notice: "Unpublished--rights reserved under the copyright laws of the United States.*"

(End of clause)

52.227-20 Rights in Data—SBIR Program.

As prescribed in 27.409(l), insert the following clause:

I RIGHTS IN DATA-SBIR PROGRAM (MAR 1994)

(a) Definitions.

"Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this clause, means recorded information, regardless of form or the medii on which it may be recorded. **The** term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

"Form, fit, and function data" as used in this clause, means data relating to items, components, or processes **that** are sufficient to enable physical and functional interchangeability as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements except that for computer software it means data identifying source, functional **characteristics**, and performance requirements but **specifically** excludes the source code, algorithm, process, formulae, and flow charts of the software.

"Limited rights data," as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that **is** a trade **secret**; is commercial or **financial** and confidential or privileged; or is published copyrighted computer software; including modifications of such computer software.

"SBIR data," as used in this clause, means data first produced by a Contractor that is a small business **firm** in performance of a small business innovation research contract issued under **the** authority of 15 U.S.C. 638 (Pub. L. 97-219, Small Business Innovation Development Act of 1982), which data are not generally known, and which data without obligation as to its confidentiality have not been made available to others by the Contractor or are not already available to the Government.

"SBIR rights," as used in this clause, mean the rights in SBIR data set forth in the SBIR Rights Notice of paragraph (d) of this clause.

"Technical data," as used in this clause, means that data which are of a scientific or technical nature.

"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform

publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in-

(i) Data **specifically** identified in this contract as data to be delivered without restriction;

(ii) Form, fit, and function data delivered under **this** contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under **this** contract; and

(iv) All other data delivered under this contract unless provided otherwise for SBIR data in accordance with paragraph (d) of this clause or for limited rights data or restricted computer software in accordance with paragraph (f) of this clause.

(2) **The** Contractor shall have the right to-

(i) Protect SBIR rights in SBIR data delivered under **this** contract in the manner and to the extent provided in paragraph (d) of this clause;

(ii) Withhold from delivery those data which are limited rights data or restricted computer software to **the** extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add, or correct SBIR rights or copyrights notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and

(iv) Establish claim to copyright subsisting in data **first** produced in the performance of this contract to **the** extent provided in subparagraph (c)(l) of this clause.

(c) *Copyright.* (1) **Data first produced in the performance of this contract.** Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. If claim to copyright is made, the Contractor shall **affix** the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data **are** published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, **prepare** derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data. For computer software, the Contractor grants to the Government, and others acting on its behalf, a **paid-up**, nonexclusive, irrevocable worldwide license for all such computer software to reproduce, prepare derivative works,

and perform publicly and display publicly, by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data that are not first produced in the performance of this contract and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause.

(3) *Removal of copyright notices.* The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Rights to SBIR data.* (1) The Contractor is authorized to **affix** the following "SBIR Rights Notice" to SBIR data delivered under this contract and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

SBIR RIGHTS NOTICE (MAR 1994)

These SBIR data are furnished with SBIR rights under Contract No. _____ (and subcontract _____, if appropriate).

For a period of 4 years after acceptance of all items to be delivered under this contract, the Government agrees to use these data for Government purposes only, and they shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without permission of the Contractor, except that, subject to the foregoing use and disclosure prohibitions; such data may be disclosed for use by support Contractors. After the aforesaid 4-year period the Government has a royalty-free license to use, and to authorize others to use on its behalf, these data for Government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This Notice shall be affixed to any reproductions of these data, in whole or in part.

(End of notice)

(2) The Government's sole obligation with respect to any SBIR data shall be as set forth in this paragraph (d).

(e) *Omitted or incorrect markings.* (1) Data delivered to the Government without any notice authorized by paragraph (d) of this clause, and without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data have not been disclosed without restriction outside the Government, the Contractor may request, within six months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates **that** the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability **with** respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction, at the Contractor's expense, of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is **authorized**, or (ii) correct any incorrect notices.

(f) *Protection of limited rights data.* When data **other** than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this contract and such data qualify as either limited rights data or restricted computer software, the Contractor, if the Contractor desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(g) *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(h) *Relationship to patents.* Nothing contained in this clause **shall** imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

52.227-21 Technical Data Certification, Revision, and Withholding of Payment—Major Systems.

As prescribed in 27.409(q), insert the following clause:

**TECHNICAL DATA CERTIFICATION, REVISION,
AND WITHHOLDING OF PAYMENT—
MAJOR SYSTEMS (JUN 1987)**

(a) *Scope of clause.* This clause shall apply to all technical data (as defined in the Rights in Data-General clause included in this contract) that have been specified in this contract as being subject to this clause. It shall apply to all such data delivered, or required to be delivered, at any time during contract performance or within 3 years after acceptance of all items (other than technical data) delivered under this contract unless a different period is set forth herein. The Contracting Officer may release the Contractor

and promptly furnish **copies** of all pertinent papers received by the Contractor. The Contractor shall, if required by **the** Government, authorize Government representatives to settle or defend the claim and to represent the Contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

(R 7-402.26(b) 1960 OCT)

(R 1-7.404-9(b))

52.228-8 Liability and Insurance—Leased Motor Vehicles.

As prescribed in 28.312, insert the following clause in solicitations and contracts for the leasing of motor vehicles (see Subpart 8.11):

LIABILITY AND INSURANCE-LEASED MOTOR VEHICLES (APR 1993)

(a) **The** Government shall be responsible for loss of or damage to--

(1) Leased vehicles, except for (i) normal wear and tear and (ii) loss or damage caused by the negligence of the Contractor, its agents, or employees; and

(2) Property of third persons, or the injury or **death** of third persons, if the Government is liable for such loss, damage, injury, or death under the Federal Tort Claims Act (28 U.S.C. 2671-2680).

(b) The Contractor shall be liable for, and shall indemnify and hold harmless the Government against, all actions or claims for loss of or damage to property or the injury or death of persons, resulting from the fault, negligence, or wrongful act or omission of the Contractor, its agents, or employees.

(c) The Contractor shall provide and maintain insurance covering its liabilities under paragraph (b) of this clause, in amounts of at least \$200,000 per person and \$500,000 per occurrence for death or bodily injury and \$20,000 per occurrence for property damage or loss.

(d) Before commencing work under this contract, the Contractor shall **certify** to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the interests of the Government shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after written notice to the Contracting Officer, whichever period is longer. The policies shall exclude any claim by the insurer for subrogation against the Government by reason of any payment under the policies.

(e) The Contractor warrants that the contract price includes no cost for insurance or contingency to cover losses, damage, injury, or death for which the Government is responsible under paragraph (a) of this clause.

(End of clause)

(R 7-1501.4 1977 JAN)

52.228-9 Cargo Insurance.

As prescribed in 28.313(a), insert the following clause in solicitations and contracts for transportation or for transportation-related services, except when freight is shipped under rates subject to released or declared value:

CARGO INSURANCE (APR 1984)

(a) **The** Contractor, at the Contractor's expense, agrees to provide and maintain, during the continuance of this contract, cargo liability insurance of \$ per vehicle to cover the value of property on each vehicle and of \$ to cover the total value of the property in the shipment.

(b) All insurance shall be written on companies acceptable to *[insert name of contracting agency]*, and policies shall include such terms and conditions as required by *[insert name of contracting agency]*. As evidence of insurance maintained, a complete duplicate certified copy of the cargo liability insurance policy or policies shall be furnished to *[insert name of contracting agency]*. Evidence of acceptable cargo insurance shall be furnished before commencing operations under this contract.

(c) Each cargo insurance policy shall include the following statement:

It is a condition of this policy that the Company shall **furnish—**

(1) Written notice to *[insert name of contracting agency]*, at the address shown on the face sheet of this contract, 30 days in advance of the effective date of any reduction in, or cancellation of, this policy; and

(2) A complete duplicate certified copy of any renewal policy to *[insert name of contracting agency]* not less than 15 days prior to the expiration of any current policy on file with *[insert name of contracting agency]*.

(End of clause)

(R 1-19.702-5)

52.228-10 Vehicular and General Public Liability Insurance.

As prescribed in 28.313(b), insert a clause substantially the same as the following in solicitations and contracts for transportation or for transportation-related services when the contracting **officer** determines that vehicular liability or general public liability insurance required by law is not sufficient:

VEHICULAR AND GENERAL PUBLIC LIABILITY INSURANCE (APR 1984)

(a) The Contractor, at **the** Contractor's expense, agrees to maintain, during the continuance of this contract, vehicular liability and general public liability insurance with limits of liability for (1) bodily injury of not less than \$ **for each person and \$ for each occurrence**, and (2) **property** damage of not less than \$ for each accident and \$, **in the aggregate**.

(b) The Contractor also agrees to maintain workers' compensation and other legally required insurance **with**

respect to the Contractor's own employees and agents.

(End of clause)

(R 1-19.702-5)

52.228-11 Pledges of Assets.

As prescribed in 28.203-6, insert the following clause:

PLEDGES OF ASSETS (FEB 1992)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment **bond**—

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of—

(1) Evidence of an escrow account containing cash, **certificates** of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except **see 28.203-2(b)(2)** with respect to Government securities held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide

(i) Evidence of title in the form of a certificate of title prepared by a **title** insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in **the** surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of **title**;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance **with** the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

(End of clause)

52.229-1 State and Local Taxes.

As prescribed in 29.401-1, insert the following clause in solicitations and contracts for leased equipment, when a fixed-price indefinite-delivery contract is contemplated, the contract will be performed wholly or partly within the United States, its possessions, or Puerto Rico, and **the** place or places of delivery are not known at the time of contracting:

STATE AND LOCAL TAXES (APR 1984)

Notwithstanding the terms of the Federal, State, and Local Taxes clause, the contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished

under this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay **the** amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption.

(End of clause)

(R 41 CFR 5A-11.401-71)

(R GSA Form 2891)

52.229-2 North Carolina State and Local Sales and Use Tax.

As prescribed in 29.401-2, insert **the** following clause in solicitations and contracts for construction to be performed in North Carolina:

NORTH CAROLINA STATE AND LOCAL SALES AND USE TAX (APR 1984)

(a) "Materials," as used in this clause, means building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired under this contract.

(b) If this is a fixed-price contract, the contract price includes North Carolina State and local sales and use taxes to be paid on materials, notwithstanding any other provision of **this** contract. If this is a cost-reimbursement contract, any North Carolina State and local sales and use taxes paid by the Contractor on materials **shall** constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) below, the Contractor shall furnish **the** Contracting Officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina State and local sales and use taxes paid. In the event the Contractor makes several purchases from the same vendor, the certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the North Carolina State and local sales and use taxes paid. The statement shall also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock and the amount of North Carolina State and local sales or use tax paid on **this property** by **the** Contractor. Any local sales or use taxes included in the Contractor's statements must be shown separately from the State sales or use taxes. The Contractor shall furnish any additional information the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim for sales or use taxes. The Contractor shall also obtain and furnish to the Contracting Officer similar certified statements by its subcontractors.

(d) If this contract is completed before the next October 1, the certified statements to be furnished pursuant to paragraph (c) above shall be submitted within 60 days after completion. If this contract is not completed before the next October 1, the certified statements shall be submitted

on that date in accordance with the provisions of the Termination clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on **that** later date.

(f) Except as required by *other* provisions of this contract, specifically citing and stated to be an exception to this clause-

(1) **The** Government is not obligated to reimburse **the** Contractor for costs incurred in excess of the total amount allotted by the Government to this contract; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of (i) the amount then allotted to the contract by the Government or, (ii) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to **this** contract.

(g) The estimated cost shall be increased to **the** extent that (1) the amount allotted by the Government or, (2) if this is a cost-sharing contract, **the** amount then allotted by the Government to the contract plus the Contractor's corresponding share, exceeds **the** estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to this contract. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this contract, whether incurred during the course of the contract or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the contract is increased, any costs the Contractor incurs before the increase that are in excess of (1) the amount previously allotted by the Government or, (2) if this is a cost-sharing contract, the amount previously allotted by the Government to the contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government

specified in the Schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in **this** clause shall affect the right of **the** Government to terminate this contract. If this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(1) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equalling the percentage of completion of the work contemplated by this contract.

(End of clause)

(R 7-203.3(b) 1966 OCT)

(R 7-402.2(c) & (d) 1966 OCT)

(R 1-7.202-3(b))

(R 1-7.402-2(c) & (d))

52.232-23 Assignment of Claims.

As prescribed in 32.806(a)(1), insert the following clause:

ASSIGNMENT OF CLAIMS (JAN 1986)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in **the** financing of **this** contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting **Officer** authorizes such action in writing.

(End of clause)

Alternate I (APR 1984). If a no-setoff commitment is to be included in the contract (see 32.801 and 32.803(d)), add **the** following sentence at the end of paragraph (a) of **the** basic clause:

Unless otherwise stated in this contract, payments to an assignee of any amounts due or to *become* due under this contract shall not, to the extent specified in the Act, be subject to reduction or **setoff**.

(R 7-103.8 1962 FEB)

(R 1-30.703 1976 MAY)

(FAC 90-20) 52-179

52.232-24 Prohibition of Assignment of Claims.

As prescribed in 32.806(b), insert the following clause:
PROHIBITION OF ASSIGNMENT OF CLAIMS

(JAN 1986)

The assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, is prohibited for this contract.

(End of clause)

52.232-25 Prompt Payment.

As prescribed in 32.908(c), insert the following clause:

(a) As authorized in 32.905(a)(1)(ii), the Contracting Officer may modify the date in subdivision (a)(6)(i) of this clause to specify a period longer than 7 days for constructive acceptance, if required to afford the Government a reasonable opportunity to inspect and test the property furnished or evaluate the services performed, except in the case of a contract for the procurement of a brand-name commercial item for authorized resale.

(b) As prescribed in 32.906(a) and only as allowed under agency policies and procedures, the Contracting Officer may insert in paragraph (b) of the clause a period shorter than 30 days (but not less than 7 days) for making contract financing payments.

PROMPT PAYMENT (MAR 1994)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in 32.902. All days referred to in this clause are calendar days, unless otherwise specified.

(a) *Invoice payments.* (1) For purposes of this clause, "invoice payment" means a Government disbursement of monies to a Contractor under a contract or other authorization for supplies or services accepted by the Government. This includes payments for partial deliveries that have been accepted by the Government and final cost or fee payments where amounts owed have been settled between the Government and the Contractor.

(2) Except as indicated in subparagraph (a)(3) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice

payment due date shall be deemed to be the 30th day after the date the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(3) The due date on contracts for meat, meat food products, or fish; contracts for perishable agricultural commodities, contracts for dairy products, edible fats or oils, and food products prepared from edible fats or oils, and contracts not requiring the submission of an invoice shall be as follows:

(i) The due date for meat and meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)) and further defined in Pub. L. 98-181 to include any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, will be as close as possible to, but not later than, the 7th day after product delivery.

(ii) The due date for fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), will be as close as possible to, but not later than, the seventh day after product delivery.

(iii) The due date for perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(44)), will be as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(iv) The due date for dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, will be as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received.

(v) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(4) An invoice is the Contractor's bill or written request for payment under the contract for supplies delivered or services performed. An invoice shall be prepared and submitted to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(4)(i) through (a)(4)(viii) of this clause. If the invoice does not comply with these requirements, then the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office (3 days for meat, meat food products, or fish, and 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils). Untimely notification will be taken into account in the computation

tion of any interest penalty owed the Contractor in the manner described in subparagraph (a)(6) of this clause.

- (i) Name and address of the Contractor.
- (ii) Invoice date.
- (iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).
- (iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
- (v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.
- (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
- (vii) Name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice.
- (viii) Any other information or documentation required by other requirements of the contract (such as evidence of shipment).

(5) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(5)(i) through (a)(5)(iii) of this clause are met, if applicable.

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- (i) A proper invoice was received by the designated billing office.
- (ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, or contractor compliance with any contract term or condition.
- (iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(6) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the *Federal Register* semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of

any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the contractor of a defective invoice within the periods prescribed in subparagraph (a)(4) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.

- (i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish, and 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 .00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(7) An interest penalty shall also be paid automatical-

ly by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a)(6) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(8) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the Contractor-

- (i) Is owed an interest penalty;
- (ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and
- (iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.

(b) **Contract financing payments.** (1) For purposes of this clause, "contract financing payment" means a Government disbursement of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government. Contract financing payments include advance payments, progress payments based on cost under the clause at 52.232-16, Progress Payments, progress payments based on a percentage or stage of completion (32.102(e)(1)) other than those made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, and interim payments on cost type contracts.

(2) For contracts that provide for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (insert day as prescribed by Agency head: if not prescribed, insert 30th day) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(3) For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(4) Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(End of clause)

52.232-26 Prompt Payment for Fixed-Price Architect-Engineer Contracts.

As prescribed in 32.908(a), insert the following clause:

(a) As authorized in 32.905(b)(4), the Contracting Officer may modify the date in subdivision (a)(S)(i) of this clause to specify a period longer than 7 days for constructive acceptance or constructive approval, if required to afford the Government a practicable opportunity to inspect and test the property furnished or evaluate the services performed.

(b) If applicable, as authorized in 32.906(a) and only as allowed under agency policies and procedures, the Contracting Officer may insert in paragraph (b) of this clause a period shorter than 30 days (but not less than 7 days) for making contract financing payments.

PROMPT PAYMENT FOR FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (MAR 1994)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in 32.902. AU days referred to in this clause are calendar days, unless otherwise specified.

(a) **Invoice payments.** (1) For purposes of this clause, "invoice payment" means a Government disbursement of monies to a Contractor under a contract or other authorization for work or services accepted by the Government, payments for partial deliveries that have been accepted by the Government, and progress payments based on contracting officer approval of the estimated amount and value of work or services performed.

(2) The due date for making invoice payments shall be as described in this subparagraph (a)(2).

(i) The due date for work or services completed by the Contractor shall be the later of the following two events:

(A) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(B) The 30th day after Government acceptance of the work or services completed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) The due date for progress payments shall be the 30th day after Government approval of Contractor estimates of work or services accomplished.

(iii) However, if the designated billing office fails to annotate the invoice or payment request with the actual date of receipt, the payment due date shall be

deemed to be the 30th day after the date the Contractor's invoice or payment request is **dated**, provided a proper invoice or payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(3) An invoice is the Contractor's bill or written request for payment under the contract for work or **serv**-ices performed under the contract. An invoice shall be prepared and submitted to the designated billing office. A proper invoice must include the items listed in **subdi**-visions (a)(3)(i) through (a)(3)(viii) of this clause. If the invoice does not comply with these requirements, then the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office. Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of this clause:

- (i) Name and address of the Contractor.
- (ii) Invoice date.
- (iii) Contract number or other authorization for work or services performed (including order **number** and contract line item number).
- (iv) Description of work or services performed.
- (v) Delivery and payment terms (e.g., prompt payment discount terms).
- (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
- (vii) Name (where practicable), title, phone **num**-ber, and mailing address of person to be notified in event of a defective invoice.
- (viii) Any other information or documentation required by the contract.

(4) An interest penalty **shall** be paid automatically by the designated payment **office**, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable.

(i) A proper invoice was received by the designated billing **office**.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611)

that is in effect on the day after the due date, except where the interest penalty is prescribed by other **govern**-mental authority. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in *the Federal Register* semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in **30-day** increments inclusive from the **first** day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding **30-day** period. If the designated billing **office** failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(3) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance or approval shall be deemed to have occurred constructively as shown in subdivisions (a)(5)(i)(A) and (B) of this clause. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, Contractor compliance with a contract provision, or requested progress payment amounts. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(A) For work or services completed by the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract.

(B) For progress payments, Government approval shall be deemed to have occurred on the 7th day after Contractor estimates have been received by the designated billing office.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the

Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 .00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable will be resolved in accordance with the clause at 52.233-1, Disputes.

(6) An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning With the first day after the end of the discount period through the date when the Contractor is paid.

(7) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the Contractor-

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.

(b) Contract Financing Payments.

(1) For purposes of this clause, if applicable, "contract financing payment," means a Government disbursement of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government, other than progress payments based on estimates of amount and value of work performed. Contract financing payments include advance payments.

(2) If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (insert day as prescribed by Agency head; if not prescribed, insert 30th day) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified. For

advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer. Contract financing payments shall not be assessed an interest penalty for payment delays.

(End of clause)

52.232-27 Prompt Payment for Construction

Contracts.

As prescribed in 32.908(b), insert the following clause:

(a) As authorized in 32.905(c)(1), the Contracting Officer may modify the date in subdivision (a)(1)(i)(A) of the clause to specify a period longer than 14 days if required to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the Contractor's performance under the contract.

(b) As authorized in 32.905(c)(5), the Contracting Officer may modify the date in subdivision (a)(4)(i) of the clause to specify a period longer than 7 days for constructive acceptance or constructive approval if required to afford the Government a reasonable opportunity to inspect and test the property furnished or evaluate the services performed.

(c) If applicable, as authorized in 32.906(a) and only as allowed under agency policies and procedures, the Contracting Officer may insert in paragraph (b) of the clause a period shorter than 30 days (but not less than 7 days) for making contract financing payments.

PROMPT PAYMENT FOR CONSTRUCTION

CONTRACTS (MAR 1994)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in 32.902. All days referred to in this clause are calendar days, unless otherwise specified.

(a) Invoice Payments.

(1) For purposes of this clause, there are several types of invoice payments which may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

(A) The due date for making such payments shall be 14 days after receipt of the payment request by the designated billing office. However, if the designated billing office fails to annotate the payment request with the actual date of receipt, the payment due date shall be deemed to be the 14th day after the date the Contractor's payment

request is dated, provided a proper payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval for release to the Contractor by the Contracting Officer.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract):

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after Government acceptance of the work or services completed by the Contractor, whichever is later. However, if the designated billing office fails to annotate the invoice with the date of actual receipt, the invoice payment due date shall be deemed to be the 30th day after the date the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) An invoice is the Contractor's bill or written request for payment under the contract for work or services performed under the contract. An invoice shall be prepared and submitted to the designated billing office. A proper invoice must include the items listed in subdivisions (a)(2)(i) through (a)(2)(ix) of this clause. If the invoice does not comply with these requirements, the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office. Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor in the manner described in subparagraph (a)(4) of this clause:

- (i) Name and address of the Contractor.
- (ii) Invoice date.
- (iii) Contract number or other authorization for work or services performed (including order number

and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., prompt payment: discount terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

(viii) For payments described in subdivision (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ix) Any other information or documentation required by the contract.

(3) An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the *Federal Register* semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(2) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the

number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in subdivision (a)(1)(ii) of this clause, Government acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 .00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the **terms** of the contract. Claims involving disputes, and any interest that may **be** payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(5) An interest penalty shall also be paid automatically by the designated payment office, without request

from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the **Office** of Management and Budget, shall be paid in addition to the interest penalty amount if the Contractor-

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.

(b) Contract Financing Payments.

(1) For purposes of this clause, if applicable, "contract financing payment" means a Government **disbursement** of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government, other than progress payments based on estimates of amount and value of work performed. Contract financing payments include advance payments and interim payments under **cost-type contracts**.

(2) If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments **shall** be made on the (insert day as prescribed by Agency head; if not prescribed, insert 30th day) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to **ensure** compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified. For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) The Contractor shall include in each subcontract for property or services (including a material supplier) ~~the~~ the purpose of performing this contract the following:

(1) A payment clause which obligates the Contractor

(4) If the Contractor is a new enrollee to the ACH system, a "Payment Information Form," SF 3881, must be completed before payment can be **processed**.

(c) In the event the Contractor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made **using electronic** funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Contractor **official** authorized to provide it, as well as the Contractor's name and contract number.

(e) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts **otherwise** properly due.

(End of clause)

52233-1 Disputes.

As prescribed in 33.215, insert the following clause:

DISPUTES (MAR 1994)

(a) This **contract** is subject to the Contract Disputes Act of 1978, **as** amended (41 U.S.C. 601613).

(b) Except as provided in the Act, all disputes arising under or relating to this **contract** shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and submitted to the Contracting **Officer** for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) **Contractors** shall provide the certification **specified** in subparagraph (d)(2)(iii) of this clause when submitting any claim-

(A) **Exceeding** \$50,000; or

(B) Regardless of the amount claimed, when using-

(Z) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(2) Any other alternative means of dispute **resolution** (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as **all or part of a claim**.

(iii) **The certification shall** state as follows: "I **certify that the claim is made in good faith; that the supporting** data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I **am duly authorized to certify the claim on behalf of the Contractor.**"

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the **claim**.

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For **Contractor-certified** claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision **will** be made.

(f) **The** Contracting officer's decision shall be **final** unless the Contractor **appeals** or **files** a suit as provided in the Act

(g) At the time a claim by the Contractor is submitted to the **Contracting Officer** or a claim by the Government is presented to the **Contractor**, the parties, by mutual consent, may agree to use ADR. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in **accordance** with the **ADRA**, any claim, **regardless** of amount, shall **be accompanied** by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of **this** clause.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting **Officer** receives the claim (**certified**, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting **Officer** initially receives the claim. Simple interest on claims **shall be paid at the rate, fixed by the Secretary of the Treasury as provided** in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as **fixed** by the Treasury Secretary during the **pendency** of the claim.

(i) The Contractor shall proceed diligently with **performance** of this contract, pending **final** resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

Alternate **I** (DEC 1991). If it is determined under agency **procedures**, that continued performance is necessary pending resolution of any claim arising under or relating to the **con-**

tract, substitute the following paragraph (i) for the **paragraph** (i) of the basic clause:

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

(AV 7-103.12(h) 1980 JUN)

52.233-2 Service of Protest.

As prescribed in 33.106, insert the following provision:

SERVICE OF PROTEST (NOV 1988)

(a) **Protests**, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSCA), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from _____

[Contracting Officer designate the official or location where a protest may be served on the Contracting Officer.]

(b) The copy of any protest shall be received in the office designated above on the same day a protest is filed with the GSCA or within one day of filing a protest with the GAO.

(End of provision)

52.233-3 Protest after Award.

As prescribed in 33.106(b), insert the following clause:

PROTEST AFTER AWARD (AUG 1989)

(a) Upon receipt of a notice of protest (as defined in 33.101 of the FAR) the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop **performance of the work called for by this contract**. The order shall be specifically identified as a **stop-work** order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the **final** decision in the protest, the Contracting Officer shall either-

(1) Cancel the **stop-work order**; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this **clause** is canceled either before or after a **final** decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage: *provided, that if the Contracting Officer decides the*

facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract

(c) If a **stop-work order** is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the **stop-work** order in arriving at the termination settlement.

(d) If a **stop-work** order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, **reasonable** costs resulting from the stop-work order,

(e) The Government's rights to terminate this contract at any time are not **affected** by action taken under this clause.

(End of clause)

Alternate I (JUN 1985). As prescribed in 33.106(b), substitute in paragraph (a)(2) the words "the Termination clause of this contract" for the words "the Default, or the Termination for Convenience of the Government clause of this contract." In paragraph (b) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be **affected**" for the words "**an** equitable adjustment in the delivery schedule or contract price, **or both**."

52.234 — 52.235 **Reserved.**

52.236-1. Performance of Work by the Contractor.

As prescribed in 36.501(b), insert the following clause in solicitations and contracts when a **fixed-price** construction contract is contemplated and the contract amount is expected to exceed \$1,000,000. The Contracting Officer may insert the clause in solicitations and contracts when a **fixed-price** construction contract is contemplated and the contract amount is expected to be \$1,000,000 or less. Complete the clause by inserting the appropriate **percentage** consistent with the complexity and magnitude of the work and customary or necessary specialty subcontracting (see 36.501(a)).

PERFORMANCE OF WORK BY THE CONTRACTOR

(APR 1984)

The Contractor shall **perform** on the site, and with its own organization, work equivalent to **at least [insert the appropriate number in words followed by numerals in parentheses]** percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

(End of clause)

(R 7-603.15 1965 JAN)

(R 1-18.104)

52.236-2 Differing Site Conditions.

As prescribed in 36.502, insert the following clause in solicitations and contracts when a **fixed-price** construction contract or a fixed-price dismantling, demolition, or

(ii) The notice shall specify a period of time following receipt of the notice by the Contractor in which the Contractor must remedy the failure or refusal specified in the notice.

(6) If the Contractor does not comply with the Contracting Officer's written notice in paragraph (c)(S)(i) of this clause, the Contracting **Officer** may by contract or otherwise-

(i) Obtain detailed recommendations for **correc-**tive action and either-

(A) Correct the supplies or services; or

(B) Replace the supplies or services, and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor, or from the proceeds, for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred;

(ii) Obtain applicable data and reports; and

(iii) Charge the Contractor for the costs incurred by the Government.

(End of clause)

Alternate I (APR 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(9) for paragraph (b)(9) of the basic clause:

(9) If correction or replacement is required, and transportation of supplies in connection with correction or replacement is necessary, transportation charges and responsibility for the supplies while in transit shall be borne by the Government.

(AV 7-105.7(d)(3) 1976 JUL)

Alternate II (APR 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph (c)(7) to the basic clause:

(7) All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total **final** price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustments made under paragraph (b)(6) of this clause shall be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the Incentive Price Revision clause of this contract.

(AV 7-105.7(d)(5) 1976 JUL)

Alternate III (APR 1984). If it is anticipated that recovery of the warranted item will involve **considerable**

Government expense for disassembly and/or reassembly of larger items, add a paragraph substantially the same as the following paragraph (c)(7) to the basic clause. Redesignate **the** additional paragraph as "(c)(8)" if Alternate II is also **being used**:

(7) The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

(AV 7-105.7(d)(6) 1976 JUL)

52.246-20 Warranty of Services.

As prescribed in **46.710(d)**, the contracting officer may insert a clause substantially as follows in solicitations and contracts when a fixed-price contract for services is contemplated and the use of a warranty clause has been approved under agency procedures, unless a clause **substantially** the same as the clause at 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, has been used:

WARRANTY OF SERVICES (APR 1984)

(a) Definitions. "Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.

"**Correction**," as used in this clause, means the elimination of a defect.

(b) Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor . . . [Contracting **Officer** shall insert the specific period **of time** in which notice shall be given to the **Contractor**; e.g., "within 30 **days from** the date **of** acceptance by the Government,"; within 1000 hours **of use** by the Government;" or other specified event whose occurrence will terminate the period **of** notice, or combination **of** any applicable events or period **of time**]. This notice shall **state** either (1) that the Contractor shall correct or reperform any defective or nonconforming services, or (2) that the Government does not require correction or **reperformance**.

(c) If the Contractor is required to correct or **reperform**, it shall **be** at no cost to the Government, and any services corrected or **reperformed** by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor falls or refuses to correct or reperform, the Contracting **Officer** may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government

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thereby, or make an equitable adjustment in the contract price.

(d) If the Government does not require correction or **reperformance**, the Contracting Officer shall make an equitable adjustment in the contract price.

(End of clause)

(R 7-1904.5(b) 1979 SEP)

52.246-21 Warranty of Construction.

As prescribed in 46.710(e)(1), the contracting officer may insert a clause substantially as follows in solicitations and contracts when a **fixed-price** construction contract (see 46.705(c)) is contemplated, and the use of a warranty clause has been approved under agency procedures:

WARRANTY OF CONSTRUCTION (APR 1984)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before **final** acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of-

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall-

(1) Obtain all warranties that would be given in normal commercial practice:

(2) Require all warranties to be executed, in writing, for **the** benefit of the Government, if directed by the Contracting Officer: and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in **Government-furnished** material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of clause)

(R 7-604.4 1976 JUL)

Alternate 1 (APR 1984). If the Government specifies in the contract the use of any equipment by "brand name and model," the contracting officer may add a paragraph substantially the same as the following paragraph (k) to the basic clause:

(k) Defects in design or manufacture of equipment specified by the Government on a "brand name and model" basis, shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the Government.

(AV 7-604.4(b) 1976 JUL)

52.246-22 Reserved.

52.246-23 Limitation of Liability.

As prescribed in 46.805(a), insert the following clause in solicitations and contracts when (a) the contract amount is expected to be over \$25,000, (b) the contract is subject to the requirements of Subpart 46.8 as indicated in 46.801, **and** (c) the contract requires delivery of end items that are not high-value items. This clause may also be used as prescribed in 46.805(b) in contracts of \$25,000 or less.

LIMITATION OF LIABILITY (APR 1984)

(a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this contract) that (1) occurs after Government acceptance of the supplies delivered under this contract, and (2) results from any defects or **deficiencies** in the supplies.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from **will-**

dures, that supplies to be furnished under contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.507(b)), delete paragraphs (a) and (b) from the clause and substitute for them the following paragraphs (a) and (b):

(a) Except as provided in paragraph (b) below, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

(b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Contractor shall notify the Contracting Officer and request (1) authorization to ship in foreign-flag vessels or (2) designation of available U.S.-flag vessels. If the Contractor is authorized in writing by the Contracting Officer to ship the supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.

(R 7-104.19, Clause paragraph (c) 1979 MAR)

Alternate II (APR 1984). If an applicable statute requires, or if it has been determined under agency procedures, that supplies, materials, or equipment to be shipped under construction contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.507(c)), delete paragraphs (a) and (b) from the clause and substitute for them the following paragraphs (a) and (b):

(a) When ocean transportation is required to bring supplies, materials, or equipment to the construction site from the United States either for use in performance of, or for incorporation in, the work called for by this contract, the Contractor shall use privately owned U.S.-flag commercial vessels to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(b) The Contractor shall not make any shipment exceeding 10 measurement tons (400 cubic feet) by vessels other than privately owned U.S.-flag commercial vessels without (1) notifying the Contracting Officer that U.S.-flag commercial vessels are not available at rates that are fair and reasonable for such vessels and (2) obtaining permission to ship in other vessels. If permission is granted, the contract price shall be equitably adjusted to reflect the difference in cost.

(R 7-603.41 1979 JUN)

52.247-65 F.o.b. Origin, Prepaid Freight—Small Package Shipments.

As prescribed in 47.303-17(f), insert the following clause:

F.O.B. ORIGIN, PREPAID FREIGHT-SMALL PACKAGE SHIPMENTS (JAN 1991)

(a) When authorized by the Contracting Officer, f.o.b.

origin freight shipments which do not have a security classification shall move on prepaid commercial bills of lading or other shipping documents to domestic destinations, including air and water terminals. Weight of individual shipments shall be governed by carrier restrictions but shall not exceed 150 pounds by any form of commercial air or 1,000 pounds by other commercial carriers. The Government will reimburse the Contractor for reasonable freight charges.

(b) The Contractor shall annotate the commercial bill of lading as required by the clause of this contract entitled "Commercial Bill of Lading Notations.**

(c) The Contractor shall consolidate prepaid shipments in accordance with procedures established by the cognizant transportation office. The Contractor is authorized to combine Government prepaid shipments with the Contractor's commercial shipments for delivery to one or more consignees and the Government will reimburse its pro rata share of the total freight costs. The Contractor shall provide a copy of the commercial bill of lading promptly to each consignee. Quantities shall not be divided into mailable lots for the purpose of avoiding movement by other modes of transportation.

(d) Transportation charges will be billed as a separate item on the invoice for each shipment made. A copy of the pertinent bill of lading, shipment receipt, or freight bill shall accompany the invoice unless otherwise specified in the contract.

(e) Loss and damage claims will be processed by the Government

(End of clause)

52.247-66 Returnable Cylinders.

As prescribed in 47.305-17, insert the following clause:

RETURNABLE CYLINDERS (MAY 1994)

(a) Cylinder, referred to in this clause, is a pressure vessel designed for pressures higher than 40 psia and having a circular cross section excluding a portable tank, multi-tank car tank, cargo tank or tank car.

(b) Returnable cylinders shall remain the Contractor's property but shall be loaned without charge to the Government for a period of ____ days [Contracting Officer shall insert number of days] (hereafter referred to as loan period) following the day of delivery to the f.o.b. point specified in the contract. Any cylinder not returned within the loan period shall be charged a daily rental beginning with the first day after the loan period expires, to and including the day the cylinders are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or made available for delivery to the Contractor's designated carrier (if the original delivery was f.o.b. destination). The Government shall pay the Contractor a rental of \$_____ [Contracting Officer shall insert dollar amount for rental, after evaluation of offers] per cylinder, per day, computed separately for cylinders by type, size,

and capacity and for each point of delivery named in the contract. No rental shall accrue to the Contractor in excess of replacement value per cylinder specified in paragraph (c) of this clause.

(c) For each cylinder lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value, less the allocable rental paid for that cylinder as follows: _____

[Contracting Officer shall insert the cylinder types, sizes, capacities, and associated replacement values.] These cylinders shall become Government property.

(d) If any lost cylinder is located within *[Contracting Officer shall insert number of days]* calendar days after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government an amount equal to the replacement value, less rental computed in accordance with paragraph (b) of this clause, beginning at the expiration of the loan period specified in paragraph (b) of this clause, and continuing to the date on which the cylinder was delivered to the Contractor.

(End of clause)

52.248-1 Value Engineering.

As prescribed in 48.201, insert the following clause in supply or service contracts to provide a value engineering incentive under the conditions specified in 48.201. In solicitations and contracts for items requiring an extended period for production (e.g., ship construction, major system acquisition), if agency procedures prescribe sharing of future contract savings on all units to be delivered under contracts awarded during the sharing period, the contracting officer shall modify subdivision (i)(3)(i) and the first sentence under subparagraph (3) of the definition of acquisition savings by substituting "under contracts awarded during the sharing period" for "during the sharing period.*" For engineering-development and low-rate-initial-production solicitations and contracts, the contracting officer shall modify subdivision (i)(3)(i) and the first sentence under subparagraph (3) of the definition of acquisition savings by substituting for "the number of future contract units scheduled for delivery during the sharing period,*" "a number equal to the quantity required over the highest 36 consecutive months of planned production, based on planning or production documentation at the time the VECP is accepted"

VALUE ENGINEERING (MAR 1989)

(a) *General.* The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the incentive sharing rates in paragraph (f) below.

(b) *Definitions.* "Acquisition savings," as used in this

clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include-

(1) Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the Contractor's allowable development and implementation costs;

(2) Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; 'and

(3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units scheduled for delivery during the sharing period. If this contract is a multiyear contract, future contract savings include savings on quantities funded after VECP acceptance.

"collateral costs," as used in this clause, means agency cost of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contracting office" includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency's office that is performing a joint acquisition action.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Future unit cost reduction," as used in this clause, means the instant unit cost reduction adjusted as the Contracting Officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either. (1) throughout the sharing period, unless the Contracting Officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated or (2) to the calculation of a lump-sum payment, which cannot later be revised.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract's cost or price resulting from negative instant contract savings.

"Instant contract," as used in this clause, means this

contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, **the** term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

“Instant unit cost reduction” means the amount of the decrease in unit cost of performance (without deducting any Contractor’s development or implementation costs) resulting from using the VECP on this, the instant contract. If this is a service contract, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

“Negative instant contract savings” means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor’s allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

“Net acquisition savings” means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

“Sharing base,” as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

“Sharing period,” as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and **ending** at the later of (1) 3 years after the first unit affected by the VECP is accepted or (2) the last scheduled delivery date of an item affected by the VECP under this contract’s delivery schedule in effect at the time **the** VECP is accepted.

“Unit,” as used in this clause, means the item or task to which the Contracting Officer and the Contractor agree the VECP applies.

“Value engineering change proposal (VECP)” means a proposal that-

(1) Requires a change to **this**, the instant contract, to implement; and

(2) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; *provided*, that it does not involve a change-

(i) In deliverable end item quantities only;

(ii) In research and development (R&D) end items or R&D test quantities that is due solely to results of previous testing under this contract; or

(iii) To the contract type only.

(c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (8) below. If **the** proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include **the** following:

(1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item’s function or characteristics are being altered, the effect of the change on the end item’s performance, and any pertinent objective test **data**.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) Identification of **the** unit to which the VECP applies.

(4) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor’s allowable development and implementation costs, including any amount attributable to subcontracts under the Subcontracts paragraph of this clause, below.

(5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(The next page is 52-281)

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract										IND				UTL
					FP	CR	FP	CR	FP	CR	FP	CR	FP	CR	CON	CON	CON	CON	
52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form)	49.502(a)(1)	C	Yes	I	A														
Alternate I	49.502(a)(2)	C	Yes	I															
52.249-2 Termination for Convenience of the Government (Fixed-Price)	49.502 (b)(1)(i)	C	Yes	I	A														
Alternate I	49.502 (b)(1)(ii)	C	Yes	I															
Alternate II	49.502 (b)(1)(iii)	C	Yes	I															
Alternate III	49.502 (b)(1)(iii)	C	Yes	I															
52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements)	49.502(b)(2)	C	Yes	I															
Alternate I	49.502(b)(2)	C	Yes	I															
52.249-4 Termination for Convenience of the Government (Services) (Short Form)	49.502(c)	C	Yes	I															
52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions)	49.502(d)	C	Yes	I															
52.249-6 Termination (Cost Reimbursement)	49.503(a)(1)	C	Yes	I															
Alternate I	49.503(a)(2)	C	Yes	I															
Alternate II	49.503(a)(3)	C	Yes	I															
Alternate III	49.503(a)(3)	C	Yes	I															
Alternate IV	49.503(a)(4)	C	Yes	I															
Alternate V	49.503(a)(4)	C	Yes	I															
52.249-7 Termination (Fixed-Price Architect-Engineer)	49.503(b)	C	Yes	I															
52.249-8 Default (Fixed-Price Supply and Service)	49.504(a)(1)	C	Yes	I															
Alternate I	49.504(a)(2)	C	Yes	I															

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A-E	FAC	IND DEL	TRN	SP	UTL SVC
52.249-9 Default (Fixed-Price Research and Development).	49.504(b)	C	Yes	I			A												O			
52.249-10 Default (Fixed-Price Construction).	49.504(c)(1)	C	Yes	—						A									O			
Alternate I	49.504(c)(2)	C	Yes	—										A					O			
Alternate II	49.504(c)(3)	C	Yes	—						O									O			
Alternate III	49.504(c)(3)	C	Yes	—										A					O			
52.249-11 Termination of Work (Consolidated Facilities or Facilities Acquisition).	49.505(a)	C	Yes	I												A						
Alternate I	49.505(a)	C	Yes	I												A						
52.249-12 Termination (Personal Services).	49.505(b)	C	Yes	I					A	A									A			
52.249-13 Failure to Perform.	49.505(c)	C	Yes	I												A						
52.249-14 Excusable Delays.	49.505(d)	C	Yes	I		A		A		A			A			A			A			
52.250-1 Indemnification Under Public Law 85-804.	50.403-3	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
Alternate I	50.403-3	C	Yes	I		A		A		A			A	A	A	A	A	A	A	A		
52.251-1 Government Supply Sources.	51.107	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		
Alternate I	51.107	C	Yes	I												A						
52.251-2 Interagency Fleet Management System (IFMS) Vehicles and Related Services.	51.205	C	Yes	I		A		A		A				A								
52.252-1 Solicitation Provisions Incorporated by Reference.	52.107(a)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.252-2 Clauses Incorporated by Reference.	52.107(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.252-3 Alterations in Solicitation.	52.107(c)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.252-4 Alterations in Contract.	52.107(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		

Provision of Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A-E	FAC	IND DEL	TRN	SP
52.252-5 Authorized Deviations in Provisions.	52.107(e)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-6 Authorized Deviations in Clauses.	52.107(f)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.253-1 Computer Generated Forms.	53.111	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

Note 1:

The following clauses are prescribed for use in letter contracts:

52.216-23, Execution and **Commencement** of Work.

52.216-24, Limitation of Government Liability.

52.216-25, **Contract Definitization**.

52.216-25. Contract **Definitization, Alternate 1**.

52.216-26, **Payments of Allowable Costs** Before **Definitization**.

52.232-16. Progress Payments, **Alternate II**.

52244-2. **Subcontracts (Cost-Reimbursement and Letter Contracts)**.

52244-2. **Subcontracts** (Cost-Reimbursement and **Letter** Contracts), **Alternate 1**.

Further **instructions** concerning **provisions** and **clauses** for letter contracts are set forth in **16.603-4(a)**.

Note 2:

The following clauses are prescribed for use in Small Business Administration 8(a) **contracts**:

52.219-11, Special 8(a) Contract Conditions.

52.219-11, **Alternate I (8(a) construction** contracts only).

52.219-12, Special **8(a)** Subcontract Conditions.

52.219-12. Altanate I (**8(a) construction** contracts only).

52.219-14, Limitations on Subcontracting.

52.219-17 Section **8(a)** Award.

52.219-18, Notification of Competition **Limited** to Eligible **8(a)** Concerns.

52.219-18. Alternate I

52.219-18, Altanate II

52.219-18, Alternate III

PART 53—FORMS

53.000 Scope of part.

This part (a) prescribes standard forms (SF's) and references optional forms (OF's) and agency-prescribed forms for use in acquisition, (b) contains requirements and information generally applicable to the forms, and (c) illustrates the forms.

53.001 Definitions.

"Exception," as used in this part, means an approved departure from the established design, content, printing specifications, or conditions for use of any standard form.

SUBPART 53.1—GENERAL

53.100 Scope of subpart.

This subpart contains requirements and information generally applicable to the forms prescribed in this regulation.

53.101 Requirements for use of forms.

The requirements for use of the forms prescribed or referenced in this part are contained in Parts 1 through 52, where the subject matter applicable to each form is addressed. The specific location of each requirement is identified in Subpart 53.2 and under "Forms" in the FAR Index.

53.102 Current editions.

The form prescriptions in Subpart 53.2 and the illustrations in Subpart 53.3 contain current edition dates. Contracting officers shall use the current editions unless otherwise authorized under this regulation.

53.103 Exceptions.

Agencies shall not (a) alter a standard form prescribed by this regulation, or (b) use for the same purpose any form other than the standard form prescribed by this regulation without receiving in advance an exception to the form (see 41 CFR 201-45.510).

53.104 Overprinting.

Standard and optional forms (obtained as required by 53.107) may be overprinted with names, addresses, and other uniform entries that are consistent with the purpose of the form and that do not alter the form in any way. Exception approval for overprinting is not needed.

53.105 Computer generation.

(a) Agencies may computer-generate the standard and

optional forms prescribed in the FAR without exception approval (see 53.103), providing there is no change to the name, content, or sequence of the data elements, and the form carries the standard or optional form number and edition date. Agencies shall notify the FAR Secretariat of their decisions to computer-generate forms prescribed by the FAR.

(b) The forms prescribed by this regulation may be computer generated by the public. Unless prohibited by agency regulations, forms prescribed by agency FAR supplements may also be computer generated by the public. Computer generated forms shall not change the name, content, or sequence of the data elements, and shall carry the Standard or Optional Form or agency number and edition date (see 53.111).

53.106 Special construction and printing.

Contracting offices may request exceptions (see 53.103) to standard forms for special construction and printing. Examples of common exceptions are as follows:

Standard Forms	Special Construction and Printing
(a) SF 18—.....	(1) With vertical lines omitted (for listing of supplies and services, unit, etc.); (2) As reproducible masters; and/or (3) In carbon interleaved pads or sets.
(b) SF's 26, 30, 33, 1447—.....	As die-cut stencils or reproducible masters.
(c) SF AA.....	(1) With serial numbers and contracting office name and address; and/or (2) On special weight of paper and with the type of construction, number of sets per book, and number of parts per set as specified by the contracting officer. (Executive agencies may supplement the administrative instructions on the inside front cover of the book.)
(d) SF 1442—.....	(1) As die-cut stencils or reproducible masters; and/or (2) With additional wording as required by the executive agency. (However, the sequence and wording of the items appearing on the prescribed form should not be altered).

53.107 Obtaining forms.

(a) Executive agencies shall obtain standard and optional forms from the General Services Administration (GSA) by using GSA Supply Catalog - Office Products (see 41 CFR 101-26.302). Standard forms adapted for computer preparation (see 53.105) or with special **construction** and printing (see 53.106) that are not available from GSA may be ordered directly from the Government Printing Office (GPO).

(b) Contractors and other parties may obtain standard and optional forms from the Superintendent of Documents, GPO, Washington, DC 20402. Standard and optional forms not available from the Superintendent of Documents may be obtained from the prescribing agency.

(c) Agency forms may be obtained from the prescribing agency.

53.108 Recommendations concerning forms.

Users of this regulation may recommend new forms or the revision, elimination, or consolidation of the forms prescribed or referenced in this regulation. Recommendations from within an executive agency shall be submitted to the cognizant council in accordance with agency procedures. Recommendations from other than executive agencies should be submitted **directly** to the FAR Secretariat.

53.109 Forms prescribed by other regulations.

Certain forms referred to in Subpart 53.2 are prescribed in other regulations and are specified by the FAR for use in acquisition. For each of these forms, the prescribing agency is identified by means of a parenthetical notation after the form number. For example, SF 1165, which is prescribed by the General Accounting Office (GAO), is identified as SF 1165 (GAO).

53.110 Continuation sheets.

Except as may be otherwise indicated in the FAR, all standard forms prescribed by the FAR may be continued on (a) plain paper of similar specification, or (b) specially constructed continuation sheets (e.g., OF 336). Continuation sheets shall be annotated in the upper right-hand corner with the reference number of the document being continued and the serial page number.

53.111 Contract clause.

Contracting officers shall insert the clause at 52.253-1, Computer Generated Forms, in solicitations and contracts that require the contractor to submit data on Standard or Optional Forms prescribed by this regulation; and, unless prohibited by agency regulations, forms prescribed by agency supplements.

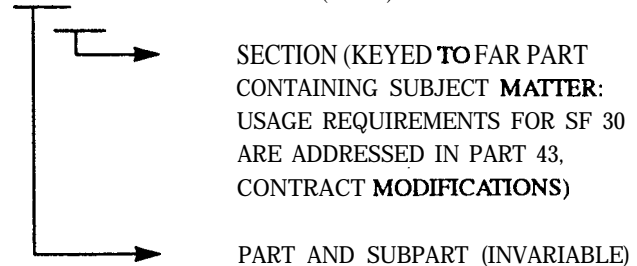
SUBPART 53.2—PRESCRIPTION OF FORMS

53.200 Scope of subpart.

This subpart prescribes standard forms and references

optional forms and agency-prescribed forms for use in acquisition. Consistent with the approach used in Subpart 52.2, this subpart **is** arranged by subject matter, in the same order as, **and** keyed to, the parts of the FAR in which the form usage requirements are addressed. For example, forms addressed in FAR Part 14, Sealed Bidding, are treated in this subpart in section 53.214, Sealed Bidding; forms addressed in FAR Part 43, Contract Modifications, are treated in this subpart in section 53.243, Contract modifications. The following example illustrates how the subjects are keyed to the parts in which they are addressed:

53.243 Contract Modifications (SF 30).



53.201 Federal acquisition system.

53.201-1 Contracting authority and responsibilities (SF 1402).

SF 1402 (10/83), *Certificate of Appointment*. SF 1402 is prescribed for use in appointing contracting officers, as specified in 1.603-3.

53.202 Reserved

53.203 Improper business practices and personal conflicts of interest.

(a) SF 119 (REV 1/90), *Statement of Contingent or Other Fees*. SF 119 is prescribed for use in obtaining information as to whether improper influence has been used in obtaining Government contracts, as specified in 3.405(b)(5).

(b) OF 333 (REV. 10/92), *Procurement integrity Certification for Procurement Officials*. OF 333 is prescribed for use, as specified in 3.104-12(a)(3). OF 333 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

53.204 Administrative matters.

53.204-1 Safeguarding classified information within industry (DD Form 254, DD Form 441).

The following forms, which are prescribed by the Department of Defense, shall be used by agencies covered

PART 53—FORMS

53.214

by the Defense Industrial Security Program if contractor access to classified information is required as specified in Subpart 4.4 and the clause at 52X4-2:

(a) *DD Form 254 (Department of Defense (DOD)), Contract Security Classification Specification.* (See 4.403(c)(1).)

(b) *DD Form 441 (DOD), Security Agreement.* (See paragraph (b) of the clause at 52.204-2.)

53.204-2 Contract reporting.

The following forms are prescribed for use by executive agencies in reporting contract actions, as specified in 4.602(c):

(a) *SF 279 (REV 10/89), Federal Procurement Data System (FPDS) - Individual Contract Action Report.* (See 4.602(c).)

(b) *SF 281 (REV 10/88), Federal Procurement Data System (FPDS) - Summary Contract Action Report (\$25,000 or Less).* (See 4.602(c).)

53.205 Publicizing contract actions.**53.205-1 Paid advertisements.**

SF 26, Award/Contract, SF 1447, Solicitation/Contract, or OF 347, Order for Supplies or Services. *SF 26*, prescribed in 53.214(a), *SF 1447*, prescribed in 53.215-1(g), or *OF 347* (or an approved agency form), prescribed in 53.213(e), shall be used to place orders for paid advertisements, within the dollar limitations and as otherwise specified in 5.503(c).

53.206 — 53.208 Reserved.

53.209 Contractor qualifications.**53.209-1 Responsible prospective contractors.**

The following forms are prescribed for use in conducting preaward surveys of prospective contractors, as specified in 9.106-1, 9.106-2, and 9.106-4.

(a) *SF 1403 (REV. 9/88), Preaward Survey of Prospective Contractor (General).* *SF 1403* is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(b) *SF 1404 (REV. 9/88), Preaward Survey of Prospective Contractor - Technical.* *SF 1404* is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(c) *SF 1405 (REV. 9/88), Preaward Survey of Prospective Contractor - Production.* *SF 1405* is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(d) *SF 1406 (REV. 9/88), Preaward Survey of Prospective Contractor - Quality Assurance.* *SF 1406* is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(e) *SF 1407 (REV. 9/88), Preaward Survey of*

Prospective Contractor - Financial Capability. *SF 1407* is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(f) *SF 1408 (REV. 9/88), Preaward Survey of Prospective Contractor - Accounting System.* *SF 1408* is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

53.210 — 53.212 Reserved.

53.213 Small purchases and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

The following forms are prescribed as stated below for use in small purchases, orders under existing contracts or agreements, and orders from required sources of supplies and services:

(a) *SF 18, Request for Quotation.* *SF 18*, prescribed in 53.215-1(a), shall be used in obtaining price, cost, delivery, and related information from suppliers for small purchases, as specified in 13.107(a).

(b) *SF 30, Amendment of Solicitation/Modification of Contract.* *SF 30*, prescribed in 53.243, may be used for modifying purchase orders, as specified in 13.503(b).

(c) *SF 44 (REV 10/83), Purchase Order-Invoice-Voucher.* *SF 44* is prescribed for use in small purchases, as specified in 1X505-3.

(d) *SF 1165, Receipt for Cash-Subvoucher: SF 1165 (GAO)* may be used for imprest fund purchases, as specified in 13.405(e).

(e) *OF 347 (10/83), Order for Supplies or Services, and OF 348 (10/83), Order for Supplies or Services—Schedule Continuation.* *OF's 347 and 348* (or approved agency forms) may be used as follows:

(1) To accomplish small purchases, as specified in 13.505-1(a)(2).

(2) To establish blanket purchase agreements (BPA's), as specified in 13.203, and to make purchases under BPA's, as specified in 13.204(e)(3).

(3) To issue orders under basic ordering agreements, as specified in 16.703(d)(2)(i).

(4) As otherwise specified in this regulation (e.g., see 5.503(c), 8.405-2, 36.701(c), and 51.102(e)(3)(ii)). Pending the publication of a new edition of *OF 347*, the title and the effective date of FAR clause 52.222-4, Contract Work Hours and Safety Standards Act-Overtime Compensation-General (APR 1984), in the block titled "Purchase Order Terms and Conditions" are revised to Contract Work Hours and Safety Standards Act-Overtime Compensation (MAR 1986).

53.214 Sealed bidding.

The following forms are prescribed for use in contracting by sealed bidding (except for construction and architect-engineers services):

53.215

FEDERAL ACQUISITION REGULATION (FAR)

(a) *SF 26, Award/Contract.* SF 26, prescribed in 53.215-1(b), shall be used in awarding sealed bid contracts for supplies or services in which bids were obtained on SF 33, Solicitation, Offer, and Award, as specified in 14.407-1(d). Pending issuance of a new edition of the form, the reference in “block 1” should be amended to read “15 CFR 700”.

(b) *SF 30, Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, shall be used in amending invitations for bids, as specified in 14.208(a).

(c) *SF 33 (REV 4/85), Solicitation, Offer and Award* SF 33 is prescribed for use in soliciting bids for supplies or services and for awarding the contracts that result from the bids, as specified in 14.201-2(a)(1), unless award is accomplished by SF 26. Pending issuance of a new edition of the form, the reference in “block 1” should be amended to read “15 CFR 700”.

(d) *SF 1447 (5/88), Solicitation/Contract.* SF 1447, prescribed in 53.215-1(g), shall be used in soliciting supplies or services and for awarding contracts that result from the bids. It shall be used when the simplified contract format is used (see 14.201-9) and may be used in place of the SF 26 or SF 33 with other solicitations and awards. Agencies may prescribe additional detailed instructions for use of the form.

(e) *SF 129 (REV 10/83), Solicitation Mailing List Application.* SF 129 is prescribed for use in establishing and maintaining lists of potential sources, as specified in 14.205-1(d).

(f) *SF 1409 (REX 9/88), Abstract of Offers, and SF 1410 (9/88), Abstract of Offers—Continuation.* SF 1409 and SF 1410 are prescribed for use in recording bids, as specified in 14.403(a).

(g) *OF 17 (REV 10/83), Sealed Bid Label.* OF 17 may be furnished with each invitation for bids to facilitate identification and handling of bids, as specified in 14.202-3(b).

(h) *OF 336 (REV 3/86), Continuation Sheet.* OF 336 may be used as a continuation sheet in solicitations, as specified in 14.201-2(b).

53.215 Contracting by negotiation.

53.215-1 Solicitation and receipt of proposals and quotations.

The following forms are prescribed, as stated below, for use in contracting by negotiation (except for construction, architect-engineer services, or small purchases):

(a) *SF 18 (REV 10/83), Request For Quotation.* SF 18 is prescribed for use in obtaining price, cost, delivery, and related information from suppliers for negotiated acquisitions, as specified in 15.406-2(a)(2).

(b) *SF 26 (REV 4/85), Award/Contract.* SF 26 is prescribed for use in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in 15.414(b).

(c) *SF 30, Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, shall be used for 53-4

amending requests for proposals, and may be used for amending requests for quotations, as specified in 15.410.

(d) *SF 33, Solicitation, Offer, and Award.* SF 33, prescribed in 53.214(c), shall be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be made by either SF 33 or SF 26, as specified in 15.406-1(b) and 15.414.

(e) *OF 336, Continuation Sheet.* OF 336, prescribed in 53.214(h), may be used as a continuation sheet in solicitations, as specified in 15.406-2(b).

(f) *SF 129, Solicitation Mailing List Application.* SF 129, prescribed in 53.214(e), shall be used in establishing and maintaining lists of potential sources, as specified in 14.205-1(d).

(g) *SF 1447, Solicitation/Contract.* SF 1447 is prescribed for use in soliciting offers for supplies or services and for awarding contracts that result from the offers. It shall be used in connection with solicitations and contracts which use the simplified contract format (see 15.416) and may be used in place of the SF 26 or SF 33 with other solicitations (see 15.414(c)). Agencies may prescribe additional detailed instructions for use of the form.

53.215-2 Price negotiation (SF's 1411, 1412).

The following standard forms are prescribed for use in connection with requirements for obtaining cost or pricing data from offerors or contractors, as specified in 15.804:

(a) *SF 1411 (REV. 7/87), Contract Pricing Proposal Cover Sheet.* (See 15.804-6(b).)

(b) *SF 1412 (10/83), Claim for Exemption from Submission of Certified Cost or Pricing Data.* (See 15.804 3(e).)

53.216 Types of contracts.

53.216-1 Delivery orders and orders under basic ordering agreements (OF 347).

OF 347, Order for Supplies or Services. OF 347, prescribed in 53.213(e), (or an approved agency form) may be used to place orders under indefinite delivery contracts and basic ordering agreements, as specified in 16.703(d)(2)(i).

53.217 — 53.218 Reserved.

53.219 Small business and small disadvantaged business concerns.

The following standard forms are prescribed for use in reporting small business subcontracting data, as specified in Part 19:

(a) *SF 294 (REV. 1/90), Subcontracting Report for Individual Contracts.* (See 19.704(a)(5).)

(b) *SF 295 (REV 1/90), Summary Subcontract Report.* (See 19.704(a)(5).) SF 295 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

53.220 — 53.221 Reserved.

53.222 Application of labor laws to Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH-347).

The following forms are prescribed as stated below, for use in connection with the application of labor laws:

- (a) Reserved.
- (b) *SF 99 (DOL), Notice of Award of Contract.*
- (c) *SF 308 (DOL) (5/85), Request for Determination and Response to Request. (See 22.404-3(a) and (b).)*
- (d) *SF 1093 (GAO) (10/71), Schedule of Withholdings under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act. (See 22.406-9(c)(l).)*

(e) *SF 1413 (REV 6/89), Statement and Acknowledgment.* SF 1413 is prescribed for use in obtaining contractor acknowledgment of inclusion of required clauses in subcontracts, as specified in 22.4065. Pending issuance of a new edition of the form, the "prescribed by" reference at the bottom right of the form is revised to read "53.222(e)".

(f) *SF 1444 (10/87), Request for Authorization of Additional Classification and Rare. (See 22.406-3(a) and 22.1019.)*

(g) *SF 1445 (10/87), Labor Standards Interview. (See 22.406-7(b).)*

(h) *SF 1446 (10/87), Labor Standards Investigation Summary Sheet. (See 22.406-8(d).)*

(i) *Form WH-347 (DOL), Payroll (For Contractor's Optional Use). (See 22.406-6(a).)*

53.223 — 53.227 Reserved.

53.228 Bonds and insurance.

The following standard forms are prescribed for use for bond and insurance requirements, as specified in Part 28:

- (a) *SF 24 (REV. 1/90), Bid Bond. (See 28.106-1.)*
- (b) *SF 25 (REV. 1/90), Performance Bond. (See 28.106-1(b).)*
- (c) *SF 25-A (REV 1/90), Payment Bond. (See 28.106-3(c).)*
- (d) *SF 25-B (REV 10/83), Continuation Sheet (For Standard Forms 24, 25, and 25-A). (See 28.106-1(d).)*
- (e) *SF 28 (REV. 1/90), Affidavit of Individual Surety. (See 28.106-1(e) and 2&203(b).)*
- (f) *SF 34 (REV 1/90), Annual Bid Bond (See 28.106-1(f).)* SF 34 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR
- (g) *SF 35 (REV 1/90), Annual Performance Bond. (See 28.106-1.)* SF 35 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR
- (h) *SF 273 (REV 8/90) Reinsurance Agreement for a Miller Act Performance Bond. (See 28.106-1(h) and 28.202-1(a)(4).)*
- (i) *SF 274 (REV 8/90), Reinsurance Agreement for a Miller Act Payment Bond. (See 28.106-1(i) and 28.202-1(a)(4).)*

(j) *SF 275 (REV 8/90), Reinsurance Agreement in Favor of the United States. (See 28.106-1(j) and 28.202-1(a)(4).)*

(k) *SF 1414 (10/83), Consent of Surety. (See 28.106-1(k).)*

(l) *SF 1415 (11/87), Consent of Surety and Increase of Penalty. (See 28.106-1(l).)* SF 1415 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR

(m) *SF 1416 (1/90), Payment Bond for Other than Construction Contracts. (See 28.106-1(m).)* SF 1416 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR

(n) *OF 90 (REV 1/90), Release of Lien on Real Property. (See 28.106-1(n) and 28.203-5(a).)* OF 90 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR

(o) *OF 91 (1/90), Release of Personal Property from Escrow. (See 28.106-1(o) and 28.203-5(a).)* OF 91 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR

53329 Taxes (SF's 1094, 1094-A).

SF 1094 (REV 10/83), U.S. Tax Exemption Certificate, and SF 1094-A (REV 10/83), Tax Exemption Certificate Accountability Record. SF's 1094 and 1094-A are prescribed for use in establishing exemption from State or local taxes, as specified in 29.302(b).

53.230 — 53.231 Reserved.

53.232 Contract financing (SF 1443).

SF 1443 (10/82), Contractor's Request for Progress Payment. SF 1443 is prescribed for use in obtaining contractors' requests for progress payments, as specified in 32.503-1.

53.233 -52.234 Reserved.

53.235 Research and development contracting (SF 298).

SF 298 (2/89), Report Documentation Page. SF 298 is prescribed for use in submitting scientific and technical reports to contracting officers and to technical information libraries, as specified in 35.010.

53.236 Construction and architect-engineer contracts.

53.236-1 Construction.

The following forms are prescribed, as stated below, for use in contracting for construction, alteration, or repair, or dismantling, demolition, or removal of improvements.

(a) *SF 1417 (REV. 8/90), Presolicitation Notice (Construction Contract).* SF 1417 is prescribed for use in

notifying prospective offerors of solicitations estimated to be \$100,000 or more and may be used if the proposed contract is estimated to be less than \$100,000, as **specified** in **36.701(a)**.

(b) *SF 1420 (10/83), Performance Evaluation - Construction Contracts*. SF 1420 is prescribed for use in evaluating and reporting on the performance of construction contractors within approved dollar thresholds and as otherwise **specified** in **36.701(e)**.

(c) Reserved.

(d) Reserved.

(e) *SF 1442 (4/85), Solicitation, Offer and Award (Construction, Alteration, or Repair)*. SF 1442 is prescribed for use in soliciting offers and awarding contracts expected to exceed the small purchase limitation for (1) construction, alteration, or repair, or (2) dismantling, demolition, or removal of improvements (and may be used for contracts within the small purchase limitation), as specified in **36.701(b)**.

(f) *OF 347 (10/83), Order for Supplies or Services*. OF 347, prescribed in 53.213(e), (or an approved agency form) may be used for contracts of \$10,000 or less for (1) construction, alteration, or repair, or (2) dismantling, demolition, or removal of improvements, as specified in **36.701(c)**.

(g) *OF 1419 (11/88), Abstract of Offers—Construction, and OF 1419A (11/88), Abstract of Offers—Construction, Continuation Sheet*. OFs 1419 and 1419A are prescribed for use in recording bids (and may be used for recording proposal information), as specified in **36.701(d)**.

53.236-2 Architect-engineer services (SF's 252, 254, 255, 1421).

The following forms are prescribed for use in contracting for architect-engineer and related services:

(a) *SF 252 (REV 10/83), Architect-Engineer Contract*. SF 252 is prescribed for use in awarding fixed-price contracts for architect-engineer services, as specified in 36.702(a). Pending issuance of a new edition of the form, Block 8, Negotiation Authority, is deleted.

(b) *SF 254 (REV. 11/92), Architect-Engineer and Related Services Questionnaire*. SF 254 is prescribed for use to obtain information from architect-engineer firms regarding their professional **qualifications**, as specified in **36.702(b)(1)**.

(c) *SF 255 (REV. 11/92), Architect-Engineer and Related Services Questionnaire for Specific Project*. SF 255 is prescribed for use within approved dollar thresholds and as otherwise specified in **36.702(b)(2)**, whenever an agency requires information to supplement the SF 254 regarding the prospective **firm's** qualifications for a particular architect-engineer project.

(d) *SF 1421 (10/83), Performance Evaluation (Architect-Engineer)*. SF 1421 is prescribed for use in evaluating and reporting on the performance of **architect-** 53-6 (FAC 90-20)

engineer contractors **within** approved dollar thresholds and **as** otherwise specified in 36.702(c).

53.237 — 53.241 Reserved.

53.242 Contract administration.

53.242-1 Novation and change-of-name agreements (SF 30).

SF 30, Amendment of Solicitation/Modification of Contract- SF 30, prescribed in **53.243**, shall be used in connection with novation and change of name agreements, as specified in **42.1203(f)**.

53.243 Contract modifications (SF 30).

SF 30 (REV. 10/83), Amendment of Solicitation/Modification of Contract. SF 30 is prescribed for use in (a) amending solicitations, whether advertised or negotiated as specified in 14.208, 15.410, and 43.301, (b) modifying purchase and delivery orders, as specified in 13.503(b). and (c) modifying contracts, as specified in **42.1203(f)**, **43.301**, **49.602-5**, and elsewhere in this regulation. Pending the publication of a new edition of the form, Instruction (b), Item 3 (effective date), is revised in **paragraphs (3)** and (5) as follows:

(b) Item 3 (effective date).

(3) For a modification issued as a **confirming** notice of termination for the convenience of the **Government**, the effective date of the **confirming** notice shall be the same as the effective date of the initial notice.

(5) For a modification confirming the termination contracting officer's previous letter determination of the amount due in settlement of a contract termination for convenience, the effective date shall be the same as the effective date of the previous letter determination.

53.244 Reserved.

53.245 Government property.

The following forms are prescribed as specified below, for use in reporting, redistribution, and disposal of contractor inventory (defined in 45.601) and in accounting for this **property**:

(a) *SF 120 (GSA), Report of Excess Personal Property, and SF 120-A (GSA), Continuation Sheet (Report of Excess Personal Property)*. (See **45.608-2(b)(2)**, **45.608-5(d)(1)**, and **45.608-8**.)

(b) *SF 126 (GSA), Report of Personal Property for Sale, and SF 126-A (GSA), Report of Personal Property for Sale (Continuation Sheet)*. (See **45.610-1(c)**.)

STANDARD
FORM (SF)**254****Architect-Engineer
and Related Services
Questionnaire**Form Approved
OMB No. 9000-0004

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0004), Washington, D.C. 20503.

Purpose:

The policy of the Federal Government in acquiring architectural, engineering, and related professional services is to encourage firms lawfully engaged in the practice of those professions to submit annually a statement of qualifications and performance data. Standard Form 254, "Architect-Engineer and Related Services Questionnaire," is provided for that purpose. Interested A-E firms (including new, small, and/or minority firms) should complete and file SF 254's with each Federal agency and with appropriate regional or district offices for which the A-E is qualified to perform services. The agency head for each proposed project shall evaluate these qualification resumes, together with any other performance data on file or requested by the agency, in relation to the proposed project. The SF 254 may be used as a basis for selecting firms for discussions, or for screening firms preliminary to inviting submission of additional information.

Definitions:

"Architect-Engineer Services" are defined in Pm-t 36 of the Federal Acquisition Regulation.

"Parent Company" is that firm, company, corporation, association or conglomerate which is the major stockholder or highest tier owner of the firm completing this questionnaire; i.e., Firm A is owned by Firm B which is, in turn, a subsidiary of Corporation C. The "parent company" of Firm A is Corporation C.

"Principals" are those individuals in a firm who possess legal responsibility for its management. They may be owners, partners, corporate officers, associates, administrators, etc.

"Discipline," as used in this questionnaire, refers to the primary technological capability of individuals in the responding firm. Possession of an academic degree, professional registration, certification, or extensive experience in a particular field of practice normally reflects an individual's primary technical discipline.

"Joint Venture" is a collaborative undertaking by two or more firms or individuals for which the participants are both jointly and individually responsible.

"Consultant," as used in this questionnaire, is a highly specialized individual or firm having significant input and responsibility for certain aspects of a project and possessing unusual or unique capabilities for assuring success of the finished work.

"Prime" refers to that firm which may be coordinating the concerted and complementary inputs of several firms, individuals or related services to produce a completed study or facility. The "prime" would normally be regarded as having full responsibility and liability for quality of performance by itself as well as by subcontractor professionals under its jurisdiction.

"Branch Office" is a satellite, or subsidiary extension, of a headquarters office of a company, regardless of any differences in name or legal structure of such a branch due to local or state laws. "Branch offices" are normally subject to the management decisions, bookkeeping, and policies of the main office.

Instructions for Filing (Numbers below correspond to numbers contained in form):

1. Type accurate and complete name of submitting firm, its address, and zip code.
 - 1a. Indicate whether form is being submitted in behalf of a parent firm or a branch office. (Branch office submissions should list only personnel in, and experience of, that office.)
2. Provide date the firm was established under the name shown in question 1.
3. Show date on which form is prepared. All information submitted shall be current and accurate as of this date.
4. Enter type of ownership, or legal structure, of firm (sole proprietor, partnership, corporation, joint venture, etc.).

Check appropriate boxes indicating if firm is (a) a small business concern; (b) a small business concern owned and operated by socially and economically disadvantaged individuals; and (c) Woman-owned (See 48 CFR 19.101 and 52.219-g).

5. Branches of subsidiaries of large or parent companies, or conglomerates, should insert name and address of highest-tier owner.

5a. If present firm is the successor to, or outgrowth of, one or more predecessor firms, show name(s) of former entity(ies) and the year(s) of their original establishment.

6. List not more than two principals from submitting firm who may be contacted by the agency receiving this form. (Different principals may be listed on forms going to another agency.) Listed principals must be empowered to speak for the firm on policy and contractual matters.

7. Beginning with the submitting office, list name, location, total number of personnel, and telephone numbers for all associated or branch offices, (including any headquarters or foreign offices) which provide A-E and related services.

7a. Show total personnel in all offices. (Should be sum of all personnel, all branches.)

8. Show total number of employees, by discipline, in submitting office. ("If form is being submitted by main or headquarters office, firm should list total employees, by discipline, in all offices.) While some personnel may be qualified in several disciplines, each person should be counted only once in accord with his or her primary function. Include clerical personnel as "administrative." Write in any additional disciplines--sociologists, biologists, etc. -- and number of people in each, in blank spaces.

STANDARD
FORM (SF)**254****Architect-Engineer
and Related Services
Questionnaire**

9. Using chart (below) insert appropriate index number to indicate range of professional services fees received by submitting firm each calendar year for last **five** years, most recent year **first**. Fee summaries should be broken down to reflect the fees received each year for (a) work performed directly for the Federal Government (not including grant and loan projects) or as a sub to other professionals performing work directly for the Federal Government; (b) all other domestic work, U.S. and possessions, including Federally-assisted projects, and (c) all other foreign work,

Ranges of Professional Services Fees

INDEX

1. Less than \$100,000
2. \$100,000 to \$250,000
3. \$250,000 to \$500,000
4. \$500,000 to \$1 million

INDEX

5. \$1 million to \$2 million
6. \$2 million to \$5 million
7. \$5 million to \$10 million
8. \$10 million or greater

10. Select and enter, in numerical sequence, **not more than thirty (30)** "Experience Profile Code" numbers from the listing (next page) which most accurately reflect submitting firm's demonstrated technical capabilities and project experience. **Carefully review list.** (It is recognized some profile codes may be part of other services or projects contained on list; firms are encouraged to select profile codes which best indicate type and scope of services provided on past projects.) For each code number, show total number of projects and gross fees (in thousands) received for profile projects performed by firm during past few years. If firm has one or more capabilities not included on list, insert same in blank spaces at end of list and show numbers in question 10 on the form. In such cases, the filled-in listing **must** accompany the complete SF 254 when submitted to the Federal agencies.

11. Using the "Experience Profile Code" numbers in the same sequence as entered in item 10, give details of at least one recent (within last five years) representative project for each code number, up to a **maximum** of thirty (30) separate projects, or portions of projects, for which firm was responsible. (Project examples may be used more than once to illustrate different services rendered on the same job. Example: a dining hall may be part of an auditorium or educational facility.) Firms which select less than thirty "profile codes" may list two or more project examples (to illustrate specialization) for each code number so long as total of all project examples does not exceed thirty (30). **After** each code number in question 11, show: (a) whether firm was "P," the prime professional, or "C," a consultant, or "JV," part of a joint venture on that particular project (new firms, in existence less than five (5) years may use the symbol "IE" to indicate "Individual Experience" as opposed to firm experience); (b) provide name and location of the specific project which typifies firm's (or individual's) performance under that code category; (c) give name and address of the

owner of that project (if government agency indicate responsible office); (d) show the estimated construction cost (or other applicable cost) for that portion of the project for which the firm was primarily responsible. (Where no construction was involved, show approximate cost of firm's work); and (e) state year work on that particular project was, or will be, completed.

12. The completed SF 254 should be signed by a principal of the firm, preferably the chief executive officer.

13. Additional data, brochures, photos, etc. should not accompany this form unless specifically requested.

NEW FIRMS (not reorganized or recently-amalgamated firms) are eligible and encouraged to seek work from the Federal Government in connection with performance of projects for which they are qualified. Such firms are encouraged to complete and submit Standard Form 254 to appropriate agencies. Questions on the form dealing with personnel or experience may be answered by citing experience and capabilities of individuals in the firm, based on performance and responsibility while in the employee of others. In so doing, notation of this fact should be made on the form. In question 9, write in "N/A" to indicate "not applicable" for those years prior to firm's organization.

Experience Profile Code Numbers
for use with questions 10 and 11

001 Acoustics. **Noise** Abatement
002 **Aerial** Photogrammetry
003 Agricultural Development: Grain Storage:
Farm **Mechanization**
004 Air Pollution Control
005 Airports: **Navals**; Airport Lighting:
Aircraft **Fueling**
006 Airports: Terminals & Hangars: **Freight**
Handling
007 **Arctic** Facilities
008 **Auditoriums** & Theatres
009 Automation: Controls. Instrumentation
010 Barracks; **Dormitories**
011 **Bridges**
012 **Cemeteries** (*Planning & Relocation*)
013 Chemical **Processing** & Storage
014 Churches: Chapels
015 Codes: Standards; Ordinances
016 Cold Storage; Refrigeration: Fast Freeze
017 Commercial **Building** (*low rise*) :
Shopping Centers
018 Communications Systems: TV:
Microwave
019 Computer Facilities: Computer **Service**
020 Conservation and Resource
Management
021 Construction Management
022 Corrosion Control: Cathodic Protection:
Electrolysis
023 Cost Estimating
024 Dams (*Concrete; Arch*)
025 Dams (Earth: Rock): Dikes: Levees
026 Desalinization (*Process & Facilities*)
027 Dining Halls, Clubs; Restaurants
028 Ecological & Archeological
Investigations
029 Educational Facilities: Classrooms
030 Electronics
031 Elevators: Escalators: People-Movers
032 Energy **Conservation**; New Energy
Sources
033 Environmental Impact **Studies**.
Assessments or Statements
034 Fallout Shelters: Blast-Resistant Design
035 Field Houses: Gyms: Stadiums
036 **Fire** Protection
037 Fisheries: Fish Ladders
038 Forestry & Forest Products
039 Garages: Vehicle **Maintenance** Facilities:
Parking Decks
040 Gas Systems (*Propane: Natural, Etc.*)
041 Graphic **Design**

042 Harbors: Jetties: **Piers**, Shlp Terminal
Facilities
043 Heating: **Ventilating**; Air Conditioning
044 Health Systems **Planning**
045 **Highrise**; Air-Rights-Type Buildings
046 **Highways**; Streets, Airfield Paving
Parking Lots
047 **Historical** Preservation
048 **Hospital & Medical** Facilities
049 Hotels: Models
050 **Housing** (*Residential. Multi-Family:*
Apartments; Condominiums)
051 Hydraulics & Pneumatics
052 Industrial Buildings: Manufacturing Plants
053 Industrial Processes: **Quality** Control
054 Industrial Waste Treatment
055 Interior Design: Space Planning
056 **Irrigation**; Drainage
057 Judicial and Courtroom Facilities
058 Laboratories. Medical Research
Facilities
059 Landscape **Architecture**
060 Libraries: Museums: Galleries
061 Lighting (*Interiors: Display: Theatre, Etc.*)
062 Lighting (*Exteriors: Streets: Memorials:*
Athletic Fields, Etc.)
063 Materials Handling Systems: Conveyors:
Sorters
064 Metallurgy
065 **Microclimatology**; Tropical **Engineering**
066 **Military** Design Standards
067 Mining & Mineralogy
068 **Missile** Facilities (*Silos; Fuels: Transport*)
069 Modular Systems **Design**; **Pre-Fabricated**
Structures or Components
070 Naval Architecture; Off-Shore Platforms
071 Nuclear Facilities: Nuclear Shielding
072 Office **Buildings**; Industrial Parks
073 **Oceanographic** Engineering
074 Ordnance; Munitions; **Special** Weapons
075 Petroleum **Exploration**; **Refining**
076 Petroleum and Fuel (*Storage and*
Distribution)
077 **Pipelines** (*Cross-Country - Liquid & Gas*)
078 **Planning** (*Community. Regional.*
Areawide and State)
079 **Planning** (*Site. Installation, and Project*)
080 Plumbing & Piping Design
081 Pneumatic Structures. Air-Support
Buildings
082 Postal Facilities
083 Power **Generation**, Transmission.
Distribution
084 Prisons & Correctional Facilities
085 Product. Machine & Equipment **Design**

086 Radar: Sonar: **Radio & Radar**
Telescopes
087 **Railroad**; Rapid Transp
088 **Recreation** Facilities (*Parks. Marinas,*
Etc.)
089 **Rehabilitation** (*Buildings: Structures:*
Facilities)
090 Resource Recovery: **Recycling**
091 **Radio** Frequency Systems & **Shieldings**
092 **Rivers**; Canals: Waterways: Flood
Control
093 Safety **Engineering**; Accident **Studies**;
OSHA Studies
094 **Security** Systems: Intruder & Smoke
Detection
095 Seismic Designs & Studies
096 Sewage Collection. Treatment and
Disposal
097 **Soils & Geologic** Studies; **Foundations**
098 Solar Energy **Utilization**
099 Solid Wastes; Incineration: Land **Fill**
100 **Special** Environments: Clean Rooms,
Etc.
101 Structural **Design**; **Special Structures**
102 Surveying: Platting: Mapping: Flood Plain
Studies
103 Swimming Pools
104 Storm Water Handling & Facilities
105 Telephone Systems (*Rural: Mobile:*
Intercom. Etc.)
106 **Testing & Inspection** Services
107 Traffic & Transportation **Engineering**
108 Towers (*Self-Supporting & Guyed*
Systems)
109 Tunnels & Subways
110 Urban Renewals: **Community**
Development
111 **Utilities** (*Gas & Steam*)
112 Value **Analysis**; **Life-Cycle** Costing
113 Warehouses & Depots
114 Water Resources; Hydrology: Ground
Water
115 Water Supply; Treatment and Distribution
116 Wind Tunnels; **Research/Testing**
Facilities **Design**
117 **Zoning**; Land Use **Studies**
201 _____
202 _____
203 _____
204 _____
205 _____

STANDARD FORM (SF) 254 Architect-Engineer and Related Services Questionnaire	1. Firm Name/Business Address:		2. Year Present Firm Established	3. Date Prepared:																								
	4a. Submittal is for <input type="checkbox"/> Parent Company <input type="checkbox"/> Branch or Subsidiary Office		4. Specify type of ownership and check below, if applicable.																									
			<input type="checkbox"/> A. Small Business																									
			<input type="checkbox"/> B. Small Disadvantaged Business																									
<input type="checkbox"/> C Woman-owned Business																												
5. Name of Parent Company, if any:		5a. Former Parent Company Name(s), if any, and Year(s) Established:																										
6. Names of not more than Two Principals to Contact: Title/Telephone 1) 2)																												
7. Present Offices: City / State / Telephone / No. Personnel Each Office			7a. Total Personnel _____																									
8. Personnel by Discipline: (List each person only once, by primary function.)																												
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">_____ Administrative</td> <td style="width: 33%;">_____ Electrical Engineers</td> <td style="width: 33%;">_____ Oceanographers</td> </tr> <tr> <td>_____ Architects</td> <td>_____ Estimators</td> <td>_____ Planners: Urban/Regional</td> </tr> <tr> <td>_____ Chemical Engineers</td> <td>_____ Geologists</td> <td>_____ Sanitary Engineers</td> </tr> <tr> <td>_____ Civil Engineers</td> <td>_____ Hydrologists</td> <td>_____ Soils Engineers</td> </tr> <tr> <td>_____ Construction Inspectors</td> <td>_____ Interior Designers</td> <td>_____ Specification Writers</td> </tr> <tr> <td>_____ Draftsmen</td> <td>_____ Landscape Architects</td> <td>_____ Structural Engineers</td> </tr> <tr> <td>_____ Ecologists</td> <td>_____ Mechanical Engineers</td> <td>_____ Surveyors</td> </tr> <tr> <td>_____ Economists</td> <td>_____ Mining Engineers</td> <td>_____ Transportation Engineers</td> </tr> </table>					_____ Administrative	_____ Electrical Engineers	_____ Oceanographers	_____ Architects	_____ Estimators	_____ Planners: Urban/Regional	_____ Chemical Engineers	_____ Geologists	_____ Sanitary Engineers	_____ Civil Engineers	_____ Hydrologists	_____ Soils Engineers	_____ Construction Inspectors	_____ Interior Designers	_____ Specification Writers	_____ Draftsmen	_____ Landscape Architects	_____ Structural Engineers	_____ Ecologists	_____ Mechanical Engineers	_____ Surveyors	_____ Economists	_____ Mining Engineers	_____ Transportation Engineers
_____ Administrative	_____ Electrical Engineers	_____ Oceanographers																										
_____ Architects	_____ Estimators	_____ Planners: Urban/Regional																										
_____ Chemical Engineers	_____ Geologists	_____ Sanitary Engineers																										
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_____ Construction Inspectors	_____ Interior Designers	_____ Specification Writers																										
_____ Draftsmen	_____ Landscape Architects	_____ Structural Engineers																										
_____ Ecologists	_____ Mechanical Engineers	_____ Surveyors																										
_____ Economists	_____ Mining Engineers	_____ Transportation Engineers																										
3. Summary of Professional Services Fees Received: (Insert index number)			Ranges of Professional Services Fees INDEX																									
Last 5 Years (most recent year first) 19 _____ 19 _____ 19 _____ 19 _____ 19 _____			1. Less than \$100,000 2. \$100,000 to \$250,000 3. \$250,000 to \$500,000 4. \$500,000 to \$1 million 5. \$1 million to \$2 million 6. \$2 million to \$5 million 7. \$5 million to \$10 million 8. \$10 million or greater																									
Direct Federal contract work, including overseas _____ All other domestic work _____ All other foreign work' _____																												
'Firms interested in foreign work, but without such experience, check here: <input type="checkbox"/>																												

0. Profile of Firm's Project Experience, Last 5 Years					
Profile Code	Number of Projects	Total Gross Fees (in thousands)	Profile Code	Number of Projects	Total Gross Fees (in thousands)
1)			11)		
2)			12)		
3)			13)		
4)			14)		
5)			15)		
6)			16)		
7)			17)		
8)			18)		
9)			19)		
0)			20)		

11. Project Examples, Last 5 Years					
Profile Code	"P," "C," "JV," or "E"	Project Name and Location	Owner Name and Address	Cost of Work (in thousands)	Completion Date (Actual or Estimated)
		1			
		2			
		3			
		4			
		5			
		6			
		7			

FAC 90-20 MARCH 10, 1994

53.301-254

FEDERAL ACQUISITION REGULATION (FAR)

[illegible]

FAC 90-20 MARCH 10, 1994

PART 53—FORMS

53.301-254

20											12. The foregoing is a statement of facts Signature: _____ Typed Name and Title: _____ Date: _____
21											
22											
23											
24											
25											
26											
27											
28											
29											
30											

STANDARD FORM 254 PAGE 7 (REV. 11-92)

*U.S. GPO: 1993-351-246

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STANDARD
FORM (SF)
255

Architect-Engineer and Related Services Questionnaire for Specific Project

Form Approved
OMB No. 9000-0005

Public reporting burden for this collection of information is estimated to average 1.2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0005), Washington, D.C. 20503.

Purpose:

This form is a supplement to the "Architect-Engineer and Related Services Questionnaire" (SF 254). Its purpose is to provide additional information regarding the qualifications of interested firms to undertake a specific Federal A-E project. Firms, or branch offices of firms, submitting this form should enclose (or already have on file with the appropriate office of the agency) a current (within the past year) and accurate copy of the SF 254 for that office.

The procurement official responsible for each proposed project may request submission of the SF 255 "Architect-Engineer and Related Services Questionnaire for Specific Project" in accord with applicable civilian and military procurement regulations and shall evaluate such submissions, as well as related information contained on the Standard Form 254, and any other performance data on file with the agency, and shall select firms for subsequent discussions leading to contract award in conformance with Public Law 92-582. This form should only be filed by an architect-engineer or related services firm when requested to do so by the agency or by a public announcement. Responses should be as complete and accurate as possible, contain data relative to the specific project for which you wish to be considered, and should be provided, by the required due date, to the office specified in the request or public announcement.

This form will be used only for the specified project. Do not refer to this submittal in response to other requests or public announcements.

Definitions:

"Architect-Engineer Services" are defined in Part 36 of the Federal Acquisition Regulation.

"Principals" are those individuals in a firm who possess legal responsibility for its management. They may be owners, partners, corporate officers, associates, administrators, etc.

"Discipline," as used in this questionnaire, refers to the primary technological capability of individuals in the responding firm. Possession of an academic degree, professional registration, certification, or extensive experience in a particular field of practice normally reflects an individual's primary technical discipline.

"Joint Venture" is a collaborative undertaking by two or more firms or individuals for which the participants are both jointly and individually responsible.

"Key Persons, Specialists, and Individual Consultants," as used in this questionnaire, refer to individuals who will have major project responsibility or will provide unusual or unique capabilities for the project under consideration.

Instructions for Filing (Numbers below correspond to numbers contained in form):

1. Give name and location of the project for which this form is being submitted.
2. Provide appropriate data from the Commerce **Business Daily** (CBD) identifying the particular project for which this form is being filed.
 - 2a. Give the date of the Commerce **Business Daily** in which the project announcement appeared, or indicate "not applicable" (N/A) if the source of the announcement is other than the CBD.
 - 2b. Indicate Agency identification or contract number as provided in the CBD announcement.
3. Show name and address of the individual or firm (or joint venture) which is submitting this form for the project.
 - 3a. List the name, title, and telephone number of that principal who will serve as the point of contact. Such an individual must be empowered to speak for the firm on policy and contractual matters and should be familiar with the programs and procedures of the agency to which this form is directed.
 - 3b. Give the address of the specific office which will have responsibility for performing the announced work.
4. Insert the number of consultant personnel by discipline proposed for subject project on line (A). Insert the number of in-house personnel by discipline proposed for subject project on line (B). While some personnel may be qualified in several disciplines, each person should be counted only once in accord with his or her primary function. Include clerical personnel as "administrative." Write in any additional disciplines --sociologists, biologists, etc. -- and number of people in each, in blank spaces.
5. Answer only if this form is being submitted by a joint venture of two or more collaborating firms. Show the names and addresses of all individuals or organizations expected to be included as part of the joint venture and describe their particular areas of anticipated responsibility (i.e., technical disciplines, administration, financial, sociological, environmental, etc.).
 - 5a. Indicate, by checking the appropriate box, whether this particular joint venture has worked together on other projects.

Each firm participating in the joint venture should have a Standard Form 254 on file with the contracting office receiving this form. Firms which do not have such forms on file should provide same immediately along with a notation at the top of page 1 of the form regarding their association with this joint venture submittal.

STANDARD
FORM (SF)
255

**Architect-Engineer
and Related Services
Questionnaire for
Specific Project**

Standard Form 255
General Services Administration
Washington, D.C. 20405

6. If respondent is not a joint venture, but intends to use outside (as opposed to in-house or permanently and formally affiliated) consultants or associates, he should provide names and addresses of all such individuals or firms, as well as their particular areas of technical/professional expertise, as it relates to this project. Existence of previous working relationships should be noted. If more than eight outside consultants or associates are anticipated, attach an additions! sheet containing requested information.

7. Regardless of whether respondent is a joint venture or an independent firm, provide brief resumes of key personnel expected to participate on this project. Care should be taken to limit resumes to only those personnel and specialists who will have major project responsibilities. Each resume must include: (a) name of each key person and specialist and his or her title, (b) the project assignment or role which that person will be expected to fulfill in connection with this project, (c) the name of the firm or organization, if any, with whom that individual is presently associated, (d) years of relevant experience with present firm and other Firms, (e) the highest academic degree achieved and the discipline covered (if more than one highest degree, such as two Ph.D.'s, list both), the year received and the particular technical/professional discipline which that individual will bring to the project, (f) if registered as an architect, engineer, surveyor, etc., show only the field of registration and the year that such registration was first acquired. If registered in several states, do not list states, and (g) a synopsis of experience, training, or other qualities which reflect individual's potential contribution to this project. Include such data as: familiarity with Government or agency procedures, similar type of work performed in the past, management abilities, familiarity with the geographic area, relevant foreign language capabilities, etc. Please limit synopsis of experience to directly relevant information.

8. List up to ten projects which demonstrate the firm's or joint venture's competence to perform work similar to that likely to be required on this project. The more recent such projects, the better. Prime consideration will be given to projects which illustrate respondent's capability for performing work similar to that being sought. Required information must include: (a) name and location of project, (b) brief description of type and extent of services provided for each project (submissions by joint ventures should indicate which member of the joint venture was the prime on that particular project and what role it played), (c) name and address of the owner of that project (if Government agency, indicate responsible office), and name and phone number of individual to contact for reference (preferably the project manager), (d) completion date (actual when available, otherwise estimated), (e) total construction cost of completed project (or where no construction was involved, the approximate cost of your work) and that portion of the cost of the project for which the named firm was/is responsible.

9. List only those projects which the A-E firm or joint venture, or members of the joint venture, are currently performing under direct contract with an agency or department of the Federal Government. Exclude any grant or loan projects being financed by the Federal Government but being performed under contract to other non-Federal Governmental entities. Information provided under each heading is similar to that requested in the preceding Item 8, except for (d) "Percent Complete." Indicate in this item the percentage of A-E work completed upon filing this form.

10. Through narrative discussion, show reason why the firm or joint venture submitting this questionnaire believes it is especially qualified to undertake the project. Information provided should include, but not be limited to, such data as: specialized equipment available for this work, any awards or recognition received by a firm or individuals for similar work, required security clearances, special approaches or concepts developed by the firm relevant to this project, etc. Respondents may say anything they wish in support of their qualifications. When appropriate, respondents may supplement this proposal with graphic material and photographs which best demonstrate design capabilities of the team proposed for this project.

11. Completed forms should be signed by the chief executive officer of the joint venture (thereby attesting to the concurrence and commitment of all members of the joint venture), or by the architect-engineer principal responsible for the conduct of the work in the event it is awarded to the organization submitting this form. Joint ventures selected for subsequent discussions regarding this project must make available a statement of participation signed by a principal of each member of the joint venture. ALL INFORMATION CONTAINED IN THE FORM SHOULD BE CURRENT AND FACTUAL.

STANDARD FORM (SF) 255 Architect-Engineer and Related Services Questionnaire for Specific Project	1. Project Name/Location for which Firm is Filing:	2a. <i>Commerce Business</i> Daily Announcement Date, if any:	2b. Agency Identification Number, if any:
3. Firm (or Joint-Venture) Name & Address	3a. Name, Title & Telephone Number of Principal to Contact		
	3b. Address of office to perform work, if different from Item 3		
4. Personnel by Discipline: (List each person only once, by primary function.) Enter proposed consultant personnel <u>to be utilized</u> on this project on line (A) and In-house personnel on line (B).			
(A) _____ (B) _____ Administrative	(A) _____ (B) _____ Electrical Engineers	(A) _____ (B) _____ Oceanographers	(A) _____ (B) _____
(A) _____ (B) _____ Architects	(A) _____ (B) _____ Estimators	(A) _____ (B) _____ Planners: Urban/Regional	(A) _____ (B) _____
(A) _____ (B) _____ Chemical Engineers	(A) _____ (B) _____ Geologists	(A) _____ (B) _____ Sanitary Engineers	(A) _____ (B) _____
(A) _____ (B) _____ Civil Engineers	(A) _____ (B) _____ Hydrologists	(A) _____ (B) _____ Soils Engineers	(A) _____ (B) _____
(A) _____ (B) _____ Construction Inspectors	(A) _____ (B) _____ Interior Designers	(A) _____ (B) _____ Specification Writers	(A) _____ (B) _____
(A) _____ (B) _____ Draftsmen	(A) _____ (B) _____ Landscape Architects	(A) _____ (B) _____ Structural Engineers	(A) _____ (B) _____
(A) _____ (B) _____ Ecologists	(A) _____ (B) _____ Mechanical Engineers	(A) _____ (B) _____ Surveyors	(A) _____ (B) _____
(A) _____ (B) _____ Economists	(A) _____ (B) _____ Mining Engineers	(A) _____ (B) _____ Transportation Engineers	(A) _____ (B) _____ Total Personnel
5. If submittal is by JOINT-VENTURE list participating firms and outline specific areas of responsibility (including administrative, technical and financial) for each firm: (Attach SF 254 for each if not on file with Procuring Office.)			
5a. Has this Joint-Venture previously worked together? <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>			

6. If respondent is not a joint-venture, list outside key Consultants/Associates anticipated for this project (Attach SF 254 for Consultants/Associates listed, if not already on file with the Contracting Office).		
Name & Address	Specialty	Worked with Prime before (Yes or No)
1)		
2)		
3)		
4)		
5)		
6)		
7)		
8)		

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm..... With Other Firms..	d. Years experience: With This Firm. With Other Firms.
e. Education: Degree(s)/Year/Specialization	e. Education: Degree(s)/Year/Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm..... With Other Firms.. . . .	d. Years experience: With This Firm,, With Other Firms.. . . .
e. Education: Degree(s)/Year/Specialization	e. Education: Degree(s)/Year/Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	
b. Project Assignment:	
c. Name of Firm with which associated:	
d. Years experience: With This Firm..... With Other Firms.....	
e. Education: Degree(s)/Year/Specialization	
f. Active Registration: Year First Registered/Discipline	
g. Other Experience and Qualifications relevant to the proposed project:	

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm... . With Other Firms.. . .	d. Years experience: With This Firm.. . . With Other Firms.
e. Education: Degree(s) /Year/Specialization	e. Education: Degree(s)/Year/Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

8. Work by firms or joint-venture members which best illustrates current qualifications relevant to this project (list not more than 10 projects).					
a. Project Name & Location	b. Nature of Firm's Responsibility	c. Project Owner's Name & Address and Project Manager's Name & Phone Number	d. Completion Date (actual or estimated)	e. Estimated Cost (In Thousands)	
				Entire Project	Work For Which Firm Was/Is Responsible.
(1)					
(2)					
(3)					
(4)					
(5)					
(6)					
(7)					
(8)					
(9)					
(10)					

9. All work by firms or joint-venture members currently being performed directly for Federal agencies.					
a. Project Name & Location	b. Nature of Firm's Responsibility	c. Agency (Responsible Office) Name and Address and Project Manager's Name & Phone Number	d. Percent Complete	e. Estimated Cost (In Thousands)	
				Entire Project	Work For Which Firm Is Responsible

10. Use this space to provide any additional information or description of resources (including any computer design capabilities) supporting your firm's qualifications for the proposed project.

11. The foregoing is a statement of facts.

Date:

Signature: _____ Typed Name and Title: _____

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RELEASE OF PERSONAL PROPERTY FROM ESCROW

Whereas _____, of _____, by a bond
(Name) (Place of Residence)
for the performance of U.S. Government Contract Number _____,
became a surety for the complete and successful performance of said contract, and

Whereas said surety has placed certain personal property in escrow

In Account Number _____ on deposit

at _____
(Name of Financial institution)

located at _____, and
(Address of Financial Institution)

Whereas I, _____, being a duly authorized
representative of the United States Government as a warranted contracting officer, have
determined that retention in escrow of the following property is no longer required to
ensure further performance of the said Government contract or satisfaction of claims
arising therefrom:

and

Whereas the surety remains liable to the United States Government for the continued
performance of the said Government contract and satisfaction of claims pertaining thereto.

Now, therefore, this agreement witnesseth that the Government hereby releases from
escrow the property listed above, and directs the **custodian** of the aforementioned escrow
account to deliver the listed property to the surety. If the listed property comprises the
whole of the property placed in escrow in the aforementioned escrow account, the
Government further directs the **custodian** to close the account and to return all property
therein to the surety, along with any interest accruing which remains after the deduction of
any fees lawfully owed to

(Name of Financial Institution)

[Date]

[Signature]

Seal

(Blank Page)

**PROCUREMENT INTEGRITY CERTIFICATION
FOR PROCUREMENT OFFICIALS**

As a condition of serving as a procurement official,
I, _____, hereby certify that
(Insert typed or printed name)

I am familiar with the provisions of subsections 27(b), (c), and (e) of the Office of Federal Procurement Policy Act (41 USC 423) as amended by section 814 of Public Law 101-189. I further certify that I will not engage in any conduct prohibited by such subsections and will report immediately to the contracting officer any information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Act and applicable implementing regulations. A written explanation of subsections 27(a) through (f) has been made available to me. I understand that, should I leave the Government during the conduct of a procurement for which I have served as a procurement official, I have a continuing obligation under section 27 not to disclose proprietary or source selection information relating to that procurement and a requirement to so certify.

SIGNATURE OF PROCUREMENT OFFICIAL

DATE

DEPARTMENT OR AGENCY

OFFICE TELEPHONE NUMBER

FAC 90-20 MARCH 10, 1994 ,

53.302-333

FEDERAL ACQUISITION REGULATION (FAR)

NAME OF PROCUREMENT OFFICIAL

SOCIAL SECURITY NUMBER

PRIVACY **Act** NOTICE **TO EMPLOYEES** AND OFFICIALS

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the following notice is provided:

AUTHORITY FOR COLLECTION OF INFORMATION: 41 U.S.C. 423 and Executive Order 9397.

Your signature on the Optional Form 333, Procurement Integrity Certification for Procurement Officials, and disclosure of your Social Security Number on this page are voluntary, but possible effects upon you if the certification is not signed and the Social Security Number is not provided include the following:

Disqualification from particular work or duty assignments, or from the position for which you have applied or which you currently hold, or other appropriate action, or administrative delay in processing your certification.

PRINCIPAL PURPOSE FOR COLLECTION OF THIS INFORMATION:

To obtain and maintain a completed certification from any person designated as a "Procurement official" as defined by 41 U.S.C. 423 and applicable procurement regulations.

ROUTINE USES WHICH MAY BE MADE OF THE COLLECTED INFORMATION:

Transfers to Federal, state, local, or foreign agencies when relevant to civil, criminal, administrative, or regulatory investigations or proceedings, including transfer to the Office of Government Ethics in connection with its program oversight responsibilities, or pursuant to a request by any appropriate Federal agency in connection with hiring, retention, or grievance of an employee or applicant, the issuance of a security clearance, the award or administration of a contract, the issuance of a license, grant, or other benefit, to committees of the Congress, or any other use specified by the Office of Personnel Management (OPM) in the system of records entitled "OPM/GOVT-1, General Personnel Records," as published in the *Federal Register* periodically by OPM.

OPTIONAL FORM (REV. 10/92) 333 BACK

PROCUREMENT INTEGRITY CERTIFICATION
FOR PROCUREMENT OFFICIALS

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I, _____, hereby certify that
(Insert typed or printed name)

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SIGNATURE OF PROCUREMENT OFFICIAL

DATE

DEPARTMENT OR AGENCY

OFFICE TELEPHONE NUMBER

NAME OF PROCUREMENT OFFICIAL

SOCIAL SECURITY NUMBER

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Transfers to Federal, state, local, or foreign agencies when relevant to civil, criminal, administrative, or regulatory investigations or proceedings, including transfer to the Office of Government Ethics in connection with its program oversight responsibilities, or pursuant to a request by any appropriate Federal agency in connection with hiring, retention, or grievance of an employee or applicant, the issuance of a security clearance, the award or administration of a contract, the issuance of a license, grant, or other benefit, to committees of the Congress, or any other use specified by the Office of Personnel Management (OPM) in the system of records entitled "OPM/GOVT-1, General Personnel Records," as published in the *Federal Register* periodically by OPM.

FAC 90-20 MARCH 10, 1994

CORRECTIONS AND SUBSCRIPTION PROBLEMS

Please complete this form to notify the FAR **Secretariat** of errors, omissions, or inconsistencies in the text of Federal Acquisition Circulars(**FAC's**). DO NOT use this form to submit suggested changes to the Regulation (see FAR 1.502). This form should be mailed to:

General Services Administration
Office of Federal Acquisition Policy
FAR Secretariat(**VRS**)
Washington, DC 20405
(202) 501-4755

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